THE HOUSE OF ASSEMBLY SELECT COMMITTEE ON WORKCHOICES LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY 26 APRIL 2007.

Mr BILL WHITE, CFMEU; **Ms JULIE PYCROFT**, RELATIVE OF FORMER ZINIFEX EMPLOYEE; **Mr MARSHALL REEVES**, UNION ORGANISER, ZINIFEX; WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Sturges) - Mr White, you are still under oath from having previously given evidence to the committee. I will hand over to you. I understand you want to clarify a few matters and go on with a bit more information.

Mr WHITE - I thank the chairman and the committee for the opportunity to submit further evidence. I appreciate that on 7 December last year, when I put forward a submission, I was advised that there was no need to rush through my submission and that further opportunities would arise. Unfortunately, upon reading the transcript from that day, it is evident that I did not heed that advice. I will slow down today. Firstly, I wish to go through the transcript and clarify a few points, if I may.

CHAIR - Certainly, you just keep going.

Mr WHITE - The first point is on page 53.

Ms SINGH - Do we have a copy of the transcript that Mr White is referring to?

CHAIR - Yes, it was sent out to us. Mr White, if I could just clarify, are you saying that there are errors in the transcript or you want to provide further information?

Mr WHITE - There are some errors in there, plus I want to provide some further information.

CHAIR - No, errors in the actual transcript of the evidence you gave?

Mr WHITE - I think there are errors in the transcript. There are some things there I probably wouldn't have said, but I probably didn't understand because I was rushing through it.

CHAIR - If you would like to do that just for the record, then you can highlight the words that you consider have been taken down in error. You can correct them and you can provide additional information and we will capture that.

Mr WHITE - On page 53, the second last paragraph, it says that we are not supposed to pass a no-disadvantage test. What that should be is that the agreements are supposed to pass a no-disadvantage test. This is the pre-WorkChoice agreements - a no-disadvantage test of the award. Since WorkChoices have come in, it is a fairness test. Who it is fair to, I don't know. The employer is the one who signs a statutory declaration to say that they are fair.

I gave some evidence last time, in the first paragraph on page 54, about Housing department contracts. Our employees were being paid $15 an hour; now I think they are on AWAs and they are on $19 an hour. From my reading of the AWAs they are not paid an award provision to transfer from site to site during the day. The award provision is 73 cents and I think that has gone up to 76 cents per kilometre now. I just wanted to clear that up because that did not come across properly -

CHAIR - That is fine. You just put on record any correction that you wish and we will pick it up.

Mr WHITE - Thanks, Chairman. With Housing department contracts the worker might paint a wall in a bathroom of a house, and then he goes to another Housing department site which might be next door or it might be 10 kilometres away. He is using his own vehicle and not being paid for that.

There is a correction to a name on page 55, fourth paragraph from the bottom. It mentions a Peter Tillick, but it should be Killick.

On page 56 we talked about a matter that was in the State commission in relation to provision of amenities. Then we spoke about the period before WorkChoices. Every employer in the State, whether they were responding to a Federal award or not, comes under the State award because of a decision about Clyde Engineering, which goes back to 1926: where the Federal award does not cover the field, where the Federal legislation is silent, State legislation applies. The Federal award is silent on amenities, therefore everybody in the State had to provide amenities as per the State Building Construction Industry Award. When I say 'everybody' I am talking about everybody on building construction sites. WorkChoices has overridden the provision now; Federal does cover the field. Therefore we have a system in the State now where those employers who are not under a Federal award, and are not constitutionally incorporated bodies, come under the State award. They still have to provide amenities as per the award. All the others just do as they please. I am not saying they all do but they only have to do as they please. They do not have to provide amenities.

Back in about 1970 with the construction of the casino, workers on that site took industrial action to get amenities - about 36 or 37 years ago. The WorkChoices legislation has helped to put back construction workers in this State 36 or 37 years, because they do not all have amenities - even portaloos. They may not even get portaloos on a site. It is an OH&S issue anyway. People working with their hands are going to get dirty hands, and then they are supposed to just sit wherever they are working and eat their lunch.

This is something, though, where the State Government could easily help employees by getting around the Howard Government's WorkChoices legislation. I mention this in this committee and I hope that we are not just bringing up everything where workers have been disadvantaged. I would like the committee to come up with an idea about how the State Government could fix it. The State Government could put in an enforceable code of practice for amenities. That is one way they could fix it. There is a second way that it could be fixed very easily. There is currently a review of workplace health and safety in Tasmania. In that review we have suggested that the Workplace Health and Safety Act and the regulations could be amended so that regulation 116, which is about

amenities and is very brief and does not say much, could be amended for the building industry and civil construction industry so that amenities are provided as per the State Building Construction Industry Award, clause 38.

The next change in the first paragraph, which is a long paragraph, is that at the bottom it mentions the word -

CHAIR - Can you refer us to the pages?

Mr WHITE - Sorry, that is on page 57. It mentions the word 'members', that should be 'amenities', and then it goes on to say 'but they tend to work at a disadvantage' and that should be 'tender for work at a disadvantage'.

CHAIR - For *Hansard*, when you refer to the next page, could you indicate the page and the area that you are going to.

Mr WHITE - The next one is on page 58, sixth paragraph down. We are talking about 'right of entry' under the WorkChoices legislation and prior to the WorkChoices legislation under the Federal system, if a union believed or had reasonable suspicion that one worker, as long as there was a union member employed by that employer, was being underpaid, the union had the right - it couldn't go on fishing expeditions, but if there was a reasonable belief - to go and check the records for every employee. Under the State system, we have to have a complaint from a member and we can only access that person's records. The WorkChoices legislation has changed the Federal system similar to the State. We have to have a written complaint from a member and they are the only records we can access.

Anyone can have a look at the law list or hearings listed in the commission, not that there are too many these days because we can't go to the Federal commission because there are no teeth there. Mostly everyone has been transferred to the Federal system, but if you look at the past in the State system, you will see that any claims for underpayment of wages are usually accompanied by a redundancy claim or a claim for long service or unfair termination. Over 90 per cent of the time claims for underpayment of wages come when the employee is no longer with the employer. Most employees do not want to put their hand up and be going their current employer for underpayment of wages. That is what we have encountered in the Federal system after WorkChoices.

I did mention last time, as a sideline, I suppose, how the union used to be invited onto sites in November/December - they probably didn't have to be invited - and work in with the employers and collect moneys for the Giving Tree.

Ms SINGH - The ABC Giving Tree?

Mr WHITE - Yes, the ABC Giving Tree. Because of the legislation we couldn't do that this time.

CHAIR - So what you are saying, Mr White, is that you were precluded access to those building sites?

Mr WHITE - We were precluded access but we made a few phone calls and some employers invited us onto the sites to collect money for the ABC Giving Tree and we did collect around about $1 500. It was a bit of a rush so we didn't have the usual amount of time. Employers really don't want to stick their heads up either with the Federal Government's system that is in place but for this occasion, they did invite us onto their sites.

Julie Pycroft is with us today and will be giving evidence and answering questions shortly.

CHAIR - Yes, we have Ms Pycroft on the agenda.

Mr WHITE - On page 59, in the sentence above the title 'Chair', which is only mentioned once on that page, is 'Julie Highcroft'. It should be Pycroft. I said that we wrote the letter and I got Julie to sign it. I said that in rush because that is not so. What I meant by that was we typed the letter. It was written in conjunction with Julie. Marshall Reeves, who is with us today, is the organiser from the CFMEU that looks after the Zinifex site. Marshall and I took the final draft to Julie and mother, father and sister and Julie signed it. I just wanted to correct that because the way I said it made it look as though the union wrote the letter. We just typed it.

CHAIR - We will note that for the record on *Hansard*.

Mr WHITE - On page 62 we mentioned TESA and Skilled have done the same agreement. That is not quite right because TESA doesn't operate anymore. It is only Skilled that have done the same agreement. That completes that part of my submission, Mr Chairman. The rest is all new evidence. Julie Pycroft is with us to clarify things and put her side of events which led to her brother's death, so I will leave it open for her.

CHAIR - Okay. What we will do, Mr White, is note the corrections that you have brought to the committee's attention and the clarification of the previous *Hansard*. We will now hand over to Ms Julie Pycroft and give her the opportunity to give whatever evidence she thinks is appropriate to the committee.

Ms PYCROFT - The reason I am here is to find out why the letter we sent off wasn't addressed by the Federal Government. We had no response to it at all.

CHAIR - Just for clarification, this is a letter that you sent to the Prime Minister, in relation to -

Ms PYCROFT - my brother's death because of the new WorkChoices laws and why he took his life. He was put out of a job that he had done for 18 years. For people in the age group of 40 you learnt your skills on the job; when you left the job you didn't have those skills anymore, they were not like an apprenticeship, so when Michael lost his job that was his life. He went down the gurgler. There were all the mates that he worked with. It wasn't just a job; it was his way of life. He left the house at seven o'clock every morning, went to work and was with his mates. He did his job and took pride in his work and then one day they decided to say, 'We don't want you anymore. Don't bother coming to work'. Your life has changed; it's gone.

Ms SINGH - Was he made redundant?

Ms PYCROFT - Yes, he was made redundant. He asked to be put somewhere else on the site but, because of the way the laws had changed, the place where he worked had the authority to say, 'No, we're not interested', and sent him down the road.

CHAIR - Would you like the letter read into *Hansard* again by one of your colleagues?

Ms PYCROFT - Yes, that is fine.

Mr WHITE - I will read the letter. It is addressed to John Howard, P.O. Box 6022, House of Representatives, Parliament House, Canberra, ACT 2600. It was posted on Friday 16 June 2006 and says:

> 'Prime Minister
>
> For 10 years the CFMEU has been party to a State-registered enterprise agreement with Zinifex and its previous identities in relation to production work at its Hobart smelter. The agreement is titled 'The Zinifex Hobart Smelter Enterprise Agreement' and is underpinned by the Zinifex Hobart Smelter Enterprise Award.
>
> A disputes resolution procedure is contained in the agreement. The final step of the disputes 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's WorkChoices legislation has seen the Zinifex agreement transferred to the Federal system with a disputes resolution procedure of the agreement being replaced by the Federal model.
>
> In 1993, Commissioner Gozzi, in matter No. T4613 of 1993 of the Tasmanian Industrial Commission, ordered Pasminco, now Zinifex, that in the event of redundancies they are 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 practises 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 in 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 choice 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 choice that Mick, his fellow work mates 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 would have enthusiastically volunteered to take Mick's redundancy. Your WorkChoices legislation removed Mick's choice of employment.
>
> Prime Minister, although I blame Zinifex for Mick's death, I blame you equally for giving them the industrial laws they embraced. Mick explained to me that some of your WorkChoices legislation that allowed him to be forced into redundancy without recourse.
>
> I understand the draconian legislation is complex but, 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.'

CHAIR - Thanks, Mr White. Just before you continue, could I just clarify something? What that is indicating to me, from my understanding and the committee's understanding, is that previously, had a circumstance arisen at this work site where the number of employees were deemed to be surplus to work requirements, a process of seeking volunteers for redundancies would have been put in place. Could you just explain in a little more detail what occurred previously? Could you also clarify that that was a State-based award and/or State-based enterprise agreement. Is that correct?

Mr WHITE - That is right, Chairman. As you are aware, Marshall Reeves is the organiser who looks after Zinifex's works. I would prefer Marshall to explain that as he has a lot more knowledge than I have.

Mr REEVES - That is right, Chairman, the enterprise agreement was a State-based one and the award is a State agreement. Where there has been disputation on those types of issues with redundancies - and Commissioner Gozzi's decision of 1993 has always been a precedent used by both parties - voluntary redundancies would be offered in the first instance. There was a range of three or four options open to the company written into the State-based agreement where you could transfer your redundancy to another employee, you could displace another labour hire employee on site and take his role, you could take voluntary redundancy or they could look at changing the scope of work. Under Work Choices, Zinifex chose to ignore all those options. If we had not been rolled into the Federal system as a notional Federal agreement we would have been able to lodge a section 29 dispute application to the State Commission. Not being able to do that probably gave Mick a sense of helplessness; I had to communicate that to him. We couldn't take it there for a dispute. Under the Federal model we could have made application to the Federal Commission and the employer did not even have to turn up - it was their call if they wanted to turn up. So we could not have a dispute over Mick's

redundancy; if we could have gone to the Federal Court and proved a breach, that still would not have kept Mick's job. So there was just nowhere to go with it. If it had still been in the State system, the section 29 dispute would have been in over the redundancy clause and how it applied. Previous to that, with all redundancies since 1993, there have always been voluntary redundancies offered first.

CHAIR - Would you have an estimate of how many you have dealt with since 1993 under that previous process - just roughly, an indicative figure?

Mr REEVES - Some 40 to 50 redundancies.

Mrs BUTLER - Mr Reeves, how was Mick when you gave him that news and what did the union need to do?

Mr REEVES - I had a fair bit of conversation with Mick over that five days, before he chose to do what he did. It is difficult. Sometimes I think I should have seen that depression was setting in in our conversations, because I was trying to find him other employment. It became quite obvious that that workplace and his workmates were his life and he was saying things to me on the phone like, 'Basically I'm stuffed. They've put $50 000 in my bank, but I would still like to be out there'.

Mrs BUTLER - Had he been a strong member of the union before this?

Mr REEVES - Yes. Mick had been a member of the union for 18-20 years.

CHAIR - Is it common practice to arbitrarily or unilaterally determine who is going to be made redundant at this place of work, or was that just a one-off?

Mr REEVES - That was a one-off. It is usually the affected area and past customer practice was that if that affected area didn't want to take redundancy, they would open it up for other people around the site. It still led to a few problems with square pegs in round holes or someone with longer service would be entitled to a greater amount of money -

CHAIR - Sorry, you may have misinterpreted my question. At the current time, if any redundancies are identified on that site, is the previous practice of seeking volunteers still sought or does the company make an arbitrary decision as to who will go?

Mr REEVES - It is interesting that you should raise that because last Thursday I was called to the Zinifex site and spoke with the superintendent of the storeroom. There are 12 people who will go from day work to shift work - they are called sluicing control officers - and if they choose not to go back onto shift, they will be offered voluntary redundancies. So they are offering voluntary redundancies again.

Ms PYCROFT - The truth is that Michael felt that nobody cared, and nobody did care. You've done your job, you've been loyal to that company for 18-20 years - I helped build that company, but I don't give a rats, the company throws you out the door. The Federal Government's has just decided, 'Who cares, these guys mean nothing. We only want them to work, once we've finished with them, throw them out the door'. The fact that the Prime Minister didn't bother to acknowledge the letter proves again he just doesn't care. At the end of the day, we are the people who are building this country and nobody cares.

That is what is being said, 'Nobody cares'. Michael had no-one. Once they'd decided they had used him up and got what they wanted out of him, they threw him out the door, and there is no-one there to help.

The unions had been left with no control whatsoever because the Government has taken it all away. So we are going to do what the Government decides, whether we want it or not. So who is the Government working for? They are certainly not working for the people, because they did nothing for my brother. All they did was destroy my whole family, not just my brother - his children and so on. At the end of the day who cares? That's how I feel the Federal Government looks at it - they don't care.

My father is 70, my mother is 65 and they could be dead in their graves too because of what the Government has done but because they have six other sons and daughters they had to hold it together. He was an important part of our family and it is never going to be the same again. Does the Federal Government give a rats? No, they don't.

Ms SINGH - Ms Pycroft, did the Prime Minister at least acknowledge receipt of your letter?

Ms PYCROFT - No.

Ms SINGH - So you don't even know if he received it?

Ms PYCROFT - No, nothing, nothing at all.

Ms SINGH - Mr White, have you made contact with the Prime Minister to see where in the pile that letter may be?

Mr WHITE - No, I don't think he would talk to us.

Ms PYCROFT - It is all right for the Federal Government to sit up there and say, 'We believe this is better for this country'. I have a brother who lost his life due to this law and I know there heaps of others. Unless you have experience of what this law is actually doing to a family, how can you sit there and say that this is better for Australia? I have just proved to you that this is not better for Australia; this is destroying families. My brother couldn't just have one job to earn the same amount of money. You have to have two or three jobs because now they are part-time. The Federal Government is saying, 'We've created these 20 000 jobs', but that is a lie because they are 20 000 part-time jobs. We should now have 40 000 because for every job you have to double it because they are all part-time jobs. It is not like when your father or my father went out to work. They left at 7 o'clock in the morning and came home at 5 o'clock at night. They then spent time with their families. They can't do that now. Men have to go to work at 7 a.m., come home at 5 p.m., then run out to work again at 8 p.m., and come home again at midnight, to earn the same amount of money. What has the Prime Minister done? He's destroyed Australia's way of life. I don't see it any other way. I have experienced it because my family has been devastated by this law and I know other families have been too. So they can't sit in front of me and say that the Federal Government has done this for the people, because they haven't. They have done this to pat themselves on the back, to make out they have created jobs, when in fact they haven't because one job now equals two part-time jobs.

CHAIR - Mr Reeves, if I could just come back to you. Can we go back to the circumstances regarding Mr Webb's redundancy from the company? Are you aware, given those circumstances last year, whether or not there were workers within that immediate area who were prepared to volunteer? What were the circumstances surrounding that? It comes back to the argument that under the previous State-based enterprise agreement there was a voluntary process. Could you also indicate what sort of experience you have in regard to working and dealing with the company?

Mr REEVES - I have dealt with EZ/Pasminco/Zinifex for nearly 30 years now as a delegate. I worked there for a while, left and became an organiser. I have dealt with a range of management out there - some good and some bad. On the question of other people wanting redundancies, there is a saying out there at the moment - and when Mick was there - that Zinifex is not now an employer of choice because it has chosen to adopt the WorkChoices legislation. If redundancies were offered tomorrow, then the last one out would turn the lights off. They would be overrun with applications for voluntary redundancy if they opened them up. If someone said, 'Mick, do you want to go? Does anyone else want to take a redundancy', they would have been overrun.

Mr White brought something else to my attention. There are some 30 to 40 labour-hire people on the site every day. They supplement the operational work force in areas of roasting, bleaching, cell room and casting. It would have been open for the company to ask one of them not to come in any more and to give Mick that job.

CHAIR - So the use of the labour-hire employees is to cover peak demand?

Mr REEVES - Yes, short or long-term sickness.

Mrs BUTLER - What would have happened under the old regime in this situation? What steps would there have been that are not there now?

Mr REEVES - The Human Resources department would have said to the six employees in the site infrastructure, 'We are doing away with your positions but we're going to put out an expression of interest across the site to see who is interested in redundancies'. They would try to manage it that way. Michael's skills could have been used in another area, and someone in that area could have taken redundancy. There was a long-standing process in place once redundancies were identified.

CHAIR - Under that process, were there procedures to upskill or introduce workers to new skills in those circumstances?

Mr REEVES - All the time. That was my same thought - to overcome a square peg in a round hole.

Mrs BUTLER - You would have had more options for support, I take it, than are given to you under this regime?

Mr REEVES - Yes, through the Industrial Commission. We would have simply said on the day, 'We don't agree with this, so we're going to put in a section 29 dispute application over the agreement and these redundancies'. That was not open to us.

Mr McKIM - Mr Reeves, you have said that you think that if they offer voluntary redundancies now then they would be overwhelmed. I think you have said words to that effect. Is that a markedly different situation from prior to the introduction of the provisions of WorkChoices? In other words, would you think that perhaps job satisfaction levels at this particular employer have decreased significantly since WorkChoices was introduced?

Mr REEVES - Definitely. I spoke to a trades delegate out there last week. There has been a huge exodus of tradespeople, highly skilled people. They have somewhat of an alarming situation out there at the moment; they have nine electricians with less than three months' service on site. They are not an employer of choice any more and people are being attracted elsewhere.

Mr McKIM - Potentially, this is going to impact on their business, is it not, if they are losing skilled employees and also if their work force is more dissatisfied than it previously was. Both of those situations would have the capacity to impact on the bottom line of the business.

Mr REEVES - Yes, definitely, and I think it is starting to.

Mr McKIM - Have you seen that across other businesses that are adopting or taking action under the new WorkChoices legislation? Do you have any direct experience of other businesses or is your experience limited to this employer?

Mr REEVES - I am a bit limited; I only look after that side of things.

Mr McKIM - Fine, thank you.

CHAIR - Ms Pycroft, do you have any more that you want to add?

Ms PYCROFT - No.

CHAIR - Thank you very much for your contribution.

Mrs BUTLER - And for your courage for coming forward.

CHAIR - Would you like to continue, Mr White?

Mr WHITE - It is a pre-WorkChoices EBA, but there are reasons I want to go through the thing and compare what would have happened then. I have a copy of the agreement plus a few notes that we made with it.

Mr McKIM - Is that being tabled, Mr Chairman.

CHAIR - Yes, we will accept that as being tabled.

Mr WHITE - It is a 'Let's Fix It', AWA.

CHAIR - Do you have another copy of this, Mr White? For the benefit of *Hansard*, let us know precisely what you are tabling and where it is from.

Mr WHITE - It is from an employer by the name of 'Let's Fix It'. It is a workplace agreement 2003, it is pre-WorkChoices, and I want to go through the events around this AWA and compare those events then to what can happen now under WorkChoices.

CHAIR - So the provisions of the 'Let's Fix It' agreement as opposed to what would prevail now?

Mr WHITE - Yes, and I have also tabled a letter dated 6 February.

CHAIR - For the benefit of *Hansard*, when you are referring to documents could you let us know what they are and where they are from.

Mr WHITE - Yes, sure.

As I said, this is pre-WorkChoices legislation. Back then it was supposed to pass the no-disadvantage test. The AWA was prepared by Island Consulting Services. The OEA - the Office of the Employment Advocate - assumed that it would be okay because it was compiled by a consulting service, an industrial relations expert, if we want to use that word, so they do not check them. The AWA itself mentions the award as underpinned by the Building Trades Award. It mentions the Building Trades Award, it should be the Building Construction Industry Award. The difference there is the Building Trades Award doesn't have an allowance for daily fares and travel in it. Going back then it was about $11.60 a day.

An employee of 'Let's Fix It', Barry Smith, a member of the CFMEU, did not want to sign the AWA without getting some advice on the contents. He came along to the union office and we went through it with him. We showed him that under the award as a casual, because that is what they were being paid as -

CHAIR - Can I just clarify, Mr White, are we talking about paid rates or minimum rates award?

Mr WHITE - Minimum rates award. For a casual for 38 hours he would have been on $822.10, under the AWA, $619.40. So he would have been disadvantaged on a 38-hour week, ordinary hours of time, by $202.70. But the provision of the award is that they can only employ a labourer for up to five days as a casual, then he is a permanent daily-hire employee. I have done the other comparison down the bottom - and this is a comparison on what the rates were back then in 2003. On a 38-hour week he would have been on $616.66 as a permanent daily hire; the AWA, treating him as a casual, gave him $619.40. On face value of the AWA, the employee is $2.74 in advance of the award but award-based employees accrue annual leave at one-twelfth of a week's pay per week, which is $54.64, sick leave, redundancy, public holidays, rostered days off at times and many other entitlements. So in actual fact he has to be worse off on that and there is no guarantee that as a casual he is going to get two or three hours work a day maybe two days a week, that sort of thing, so he is going to be a lot worse off under that.

In schedule 1 we have mentioned what the casual loading rate is for a labourer, just how they have been worked out. The wage increase of 3.5 per cent back then was probably less than the safety net would have been. That was a prediction. There is a disability

allowance that further lowers the rate of $13.15 when compared to the award. In clause 4 of the agreement we have the intent:

> 'This agreement will totally regulate the terms and conditions of your employment with the company which would otherwise be covered by the Building Trades Award.'

We just wondered what that meant because it is the wrong award anyway. There is no provision in the agreement for public holidays, weekend work, rostered days off, fares and travel allowance - I was wrong in my guess; it was $12.80 a day - meal allowance, inclement weather provisions. If it is raining and you can't work, there is a provision in the award for up to 32 hours pay over a four-week period. It starts back somewhere in 1983, I think it was, and then just rotates every four weeks. This doesn't have any such allowance in it. There is no allowance for annual leave, sick leave, jury service, time records and that sort of thing. It replaces the agreement, we understand that, but this was all typed up for Barry to take away and have a look at.

CHAIR - Mr White, this agreement was ratified under the Workplace Relations Act and is still current under the amendment called WorkChoices to the act?

Mr WHITE - I am not sure how this agreement operates now, but it was ratified. There were six employees working on this site; five of them signed the AWA and five of them were registered. Barry Smith was the only one who did not sign it. I won't worry about going through that comparison any further. Suffice it to say it does not stand up to the award when there was a no-disadvantage testing place.

CHAIR - Okay, so again just for clarification, you have tabled a Let's Fix It Workplace Agreement 2003 and a comparative document prepared by CFMEU Construction Division.

Mr WHITE - Yes.

CHAIR - Thank you.

Mr WHITE - Barry Smith was sacked because he would not sign the AWA, which we all know was illegal. We lodged a dispute in the Tasmanian Industrial Commission. The employer did not want to talk about it, so we said, 'Right, we'll lodge a dispute'. We did that. Before the dispute came to hearing I also tabled a letter - it is on the back of that agreement, dated 6 February, from Island Consulting Services. It is addressed to Michael Huxley, an organiser with the CFMEU. This goes on:

> 'I wish to confirm the following arrangements and undertakings regarding the reinstatement of Barry Smith with the Let's Fix It. Barry Smith is to be reinstated as a builder's labourer under the Building Construction Industry Award' -

so now it is the correct award and not the Building Trades Award -

> 'as from Tuesday 10 February 2004.'

I will not worry about going through the whole thing. There was back payment. He was paid for the time he was stood down. All these were things that could be done then. Under WorkChoices, Constitutional Corporation Let's Fix It, he is exempt from unfair dismissal. The AWA would be fine now -

CHAIR - So you are saying now those provisions would not have applied. There would be no provision to seek reinstatement or retrospective payment?

Mr WHITE - None at all.

CHAIR - Okay.

Mr WHITE - Sorry, Mr Chairman, I need a copy of Julie's letter. The next one I would like to go through - and this is probably a long-winded thing - is in relation to events that have unfolded with Skilled and TESA labour hire companies in relation to AWAs at Zinifex. It has really been very interesting the way this has unfolded. Mr Chairman, I have a whole bundle of documents to hand up. Instead of going through them and mentioning them all now, can I just mention them and table them.

CHAIR - You just do what you think is appropriate but as you refer to a document if you could let us know what the document is, where it is from, what it relates to and if you wish to table it just seek leave to table it and we will deal with it in that manner.

Mr WHITE - Okay.

CHAIR - As you get to them you just tell us which one you are up to and then we will table them in order of your raising the particular matter.

Mr WHITE - Mr Chairman, the story is in this. The first document I would like to table is a decision from the Tasmanian Industrial Commission. It is matter No. T11802 of 2004 and T11848 of 2004. It is CFMEU and Skilled Group Limited and the TESA Group Limited. It is a decision of Commissioner T.J. Abey, dated 21 September 2005.

CHAIR - Do you wish to talk to that paper that you are tabling?

Mr WHITE - Thank you, Mr Chairman. The background is that the labour hire employees of the Skilled and the then TESA group, employed in the production of zinc at the Zinifex Hobart smelter, have for some time been thought to be award-free.

Marshall Reeves did some arguing about overtime and had discussions with people, saying that they should have been under the Zinifex Hobart Smelter Enterprise Award. We believe the scope of that award covers any employee - they do not have to be employed by Zinifex - who is involved in the production of zinc or like materials.

We lodged the matter in the Commission some time during 2005; the decision was obviously not agreed to and it was argued by Skilled, TESA and Zinifex. Commissioner Abey found at 77, which is on page 11 and which says:

> 'I conclude therefore that the award applies to employees of TESA and Skilled in so far as such employees are engaged in the production process as described in the evidence.'

His order, on page 12, says:

> 'Pursuant to section 31 of the Act, I find that employees of Skilled Group Limited and the TESA Group Pty Ltd, who are engaged in the production process at the Risdon Smelter of Zinifex, are subject to the terms of the Zinifex Hobart Smelter Enterprise Award, such findings have effect from 21 September 2005. I so order.'

CHAIR - Mr White, could you clarify, you say section 31 of the act, which act is that?

Mr WHITE - That is the Industrial Relations Act.

CHAIR - The State Industrial Relations Act?

Mr WHITE - Yes, 1984.

We thought that it was not quite correct that the award applied from 21 September 2005. We wondered, if it applied then, why it didn't apply on 20 September 2005 and continue backwards. Anyway, everyone was pretty happy with the decision. TESA and Skilled were happy with the decision - no backpay for them; they only had to pay by the award, which meant an increase, depending on how the employees worked, of $3 to $6 an hour. They work alongside the Zinifex permanent employees who were on an enterprise agreement and worked 12-hour rotational shifts. They do two days of 12 hours, two nights of 12 hours and then have the next four days off.

They are on an aggregated rate of pay and if we aggregated that rate out of the award along similar lines, it would have been about an extra $6 an hour. There is no casual clause in the award and no provision for 12-hour shifts unless it is by agreement with the union. What they would do to work the 12-hour shifts is eight hours of ordinary time and then four hours of double, which would have been a significant cost. We told them we would be prepared under this order to do an EBA that did have provision for casual employees, for people who were actually employed as casuals, but a large number of employees who worked for these two labour hire companies were actually on a roster, along with the permanent, so they were working on a permanent basis.

Anyway, we told TESA and Skilled we could live with that but if anybody appealed the decision, we would be appealing the date, we would be looking for retrospectivity.

Zinifex and AMMA - Australian Minerals and Metal Association - in their wisdom decided to appeal it. Skilled and TESA didn't appeal.

The next document I would like to table is dated 13 June 2006. It is the full bench decision - T-12321, T-12322, T-12323 and T-12341, all of 2005 - Zinifex, Australian Mines and Metals Association, CFMEU, the AWU, the TESA group, the Skilled group. It is a decision of the full bench, made up of President P.L. Leary, Deputy President P.C. Shelley, and Commissioner J.P. McAlpine. There was an appeal against the

decision handed down by Commissioner Abey, which we just went through. I haven't handed up the full decision; it is only extracts from the decision. At 25 it says: 'Accordingly, the finding of the Commissioner that the award applies to the employees of TESA and Skilled so far as such employees are engaged in the production process as described in evidence, is a correct finding.' So they dismissed the appeal of Zinifex and AMMA.

At 31 they say, 'We agree with that submission. If the Zinifex award has application to the employees of TESA and Skilled then it has application for the period of their employment on the Zinifex site'. So our appeal was upheld.

At 32, 'Accordingly, we are of the view that the Commissioner erred in limiting the application of the award to the nominal date of 21 September 2005'.

At 33, 'We confirm the findings of the Commissioner that the Zinifex award has application for TESA and Skilled but vary the order by deleting the reference to the effective date of 21 September 2005'. The order is the exact same order of Commissioner Abey without that date of 21 September 2005.

During October 2005, Skilled offered an AWA to their employees. One of the documents that I would like to table is an Australian workplace agreement, as provided by part 6(d) of the Workplace Relations Act, for the Skilled Group Limited, Zinifex Hobart smelter. Up the top I have a little note about it being old.

CHAIR - You may care to make reference to that if you want.

Mr WHITE - This agreement, as I said, was during October 2005. The agreement on the third page, at clause 3, is of interest in that the operation of the agreement was from 1 November 2005 until 1 February 2006, the date that the WorkChoices legislation was supposed to come in - in other words, a three-month agreement.

I will mention the rates of pay. They are at clause 13 and go through from grade zero, grade 1, Monday to Friday et cetera for day work and shift work. They are all casual rates of pay.

The next document I would like to table is a letter dated 29 November 2005 to the Employment Advocate at the office of the Employment Advocate, 188 Collins Street, Hobart. It is a letter from the CFMEU, and it goes on about Australian workplace agreements. It is about the agreement we just tabled.

> 'Recently, Skilled Group Limited - Skilled - offered an Australian workplace agreement - AWA - to their employees. This AWA is site-specific and only covers work of production employees engaged on a labour-hire basis at the Zinifex Hobart smelter in line with section 170B(k) of the Workplace Relations Act. Two employees of Skilled have appointed the CFMEU as their bargaining agent.'

I have taken out the name of the two employees. Their signed authorities are enclosed. They were sent to the OEA and I have enclosed them with this. What we also enclosed is a spreadsheet that shows the AWA does not meet a no-disadvantage test when compared to the Zinifex Hobart smelter enterprise award. On our spreadsheet for the no-

disadvantage test, the highlight colour under the award wages compares with the same colour under the skilled wages. For example, for a day shift for Monday to Friday, an employee on the award rate would receive $256.38 for a 12-hour shift; this includes accrued annual leave and leisure leave entitlements. For the same 12-hour shift under the skilled AWA the employee would receive $199.56. The employee is disadvantaged by $56.82. The employee would be disadvantaged by $117.96 when working a 12-hour shift. That is only for the one shift, not for a week.

> 'Zinifex site management superintendents are telling skilled employees that only those who have signed AWAs will be working a full 12-hour shift. Those that choose to work as per the award will only be given eight hours.'

The rest of that will come out later on. The upshot of that for those two for which we acted as bargaining agents was that the OEA advised that the AWAs were not registered. The manager of Skilled told me that the AWAs failed a no-disadvantage test by almost $2 an hour. Because of privacy laws the OEA could not tell us about the other AWAs but we know that none were registered. It is not hard to use your imagination about whether they had passed a no disadvantage test.

We received a number of complaints and I would like to table those complaints please, Mr Chairman. They are in a bundle and I will go through each one of them. I would like to table the bundle, if that is okay. They are entitled 'AWA Complaint Form'.

CHAIR - We will accept those, thank you.

Mr WHITE - The first one is from a Geoff Bayling. On the second page, 'your claim', he says down the bottom:

> 'Mark Emmett, supervisor for Zinifex, told me if I didn't sign the AWA my hours would reduce from a 12-hour shift to eight hours and no overtime would be paid. He said he would use only blokes who sign AWAs. He gave me an example of a bloke in casting who hadn't signed an AWA and he wouldn't get any more work.'

That is a fact; that bloke did not get any more work.

> 'If we didn't sign an AWA, its costs would increase from $100 000 to $140 000 per month. He said he won't pay that.'

The next one is from a Robert McKenna. In the first couple you will note that, about half-way down, it says, 'To investigate your claim fully we may need to tell your employer your name. Do you agree to this? Tick yes'. In some of these as we go through where there is no tick I have deleted their name. Robert McKenna, an employee of TESA, his claim on the second page:

> 'I was told that if I didn't sign an AWA I would not be working 12-hour shifts by TESA management, Ted Walkley and Peter Waller. This can be witnessed by other persons.'

The next claim form says on page 3:

> 'Peter Waller informed me that if I did not sign an AWA my work at Zinifex would reduce or disappear. I felt I had no option and that I had to sign the AWA. At the time Peter was being made to do this by Zinifex.'

Mrs BUTLER - This is at a time when the company is doing pretty well, isn't it?

Mr WHITE - Yes, they are doing pretty well.

The next one is also blanked out. May I say please, Mr Chairman, that all these forms went to the Office of the Employment Advocate. They did not conduct an investigation but I do not think it was in their brief to conduct that. They have since gone to the Office of Workplace Services and they are in the process of conducting an investigation. Everyone that has sent in a complaint is being interviewed. Some management from Zinifex are being interviewed. I believe that they are in the process of interviewing management from Skilled. Some of these comments were made, believe it or not, in a meeting with six where they say it could be witnessed, six employees together, by Zinifex's Mark Emmett and one of our delegates was in on the meeting and he is being interviewed as well, so I am very certain that there will be prosecutions that will come out of this, but I am going through these for a reason.

These complaints came up because the union was involved and these blokes are union members. I hate to think what is happening to employees out there that are a bit scared to come forward and have not got any backing.

The next one - and once again the name has been taken out but the name obviously has been revealed to AWS but they are not going to reveal names to the employer - says:

> 'I was advised that if I didn't sign an AWA I would not be working 12-hour shifts by Peter Waller.'

Peter Waller was from TESA.

> 'This can be witnessed by another TESA employee.'

The next complaint form, with the names taken out, is Skilled Engineering:

> 'Zinifex rep said that if not signed AWA would be unlikely to get work. This was told to myself and at least six other contractors in a meeting in a team leader's office of Zinifex Hobart.'

It might be best if I table the rest of them as I think it is pointless just going through them because they are all pretty much the same.

CHAIR - It is your time, Mr White.

Ms SINGH - How many do you have there, Mr White, that you would table?

Mr WHITE - Eight of them. We would have had a lot more than that but we were told by the Office of Employment Advocate at the time that that was enough and not to worry

about flooding them with any more because that was enough for them to cause an investigation. As I said, the AWS are now investigating.

CHAIR - Over what period of time were these lodged again, Mr White, just for my benefit?

Mr WHITE - They all came out at about the end of 2005 when the AWA was offered, when that three-month AWA was offered by Skilled. TESA also put up an AWA but it was for a longer term than the three months.

CHAIR - As you understand, Mr White, these complaints are now only being investigated?

Mr WHITE - Yes, the OEA used the complaints to not register the AWA - the complaints and our no disadvantage test. They failed the no disadvantage test.

Ms SINGH - But the employer did not seek to register the AWA either, I think, is that what you are saying?

Mr WHITE - No, they were lodged.

Ms SINGH - Was this AWA registered?

Mr WHITE - No, it was not registered, it was lodged for registration but the OEA would not register it because it did not meet the no-disadvantage test.

CHAIR - But would it be registered now under WorkChoices? Is there a no-disadvantage test process? Is that the point you are making?

Mr WHITE - That is the point I am making, if I may continue, Mr Chairman, and we will get to that.

The next document I would like to table is a memo issued by Skilled. It is undated, it is signed by Peter Eaves, the branch manager, and I will not go through the whole thing. The second dot point says:

> 'Regrettably, despite the AWA receiving an initial favourable reassessment by the independent Office of the Employment Advocate, there were some technical delays which have held up the process for some time now.'

What they go on about is that they are offering new AWAs.

The next document that I would like to table is another Australian Workplace Agreement.

CHAIR - Have you tabled the Skilled memo?

Mr WHITE - Yes. I will not go through that any further. The next document I would like to table is another Australian Workplace Agreement by the Skilled Group. This has the one little word up the top, 'new'. This is their replacement agreement under WorkChoices legislation; the other one was pre-WorkChoices.

The person who has just entered is our head delegate at Zinifex, Michael Van de Kamp. He has some evidence to give later on.

The new agreement is basically the same as the old agreement that didn't pass a no-disadvantage test and was not registered because of technical delays, according to the memo of the OEA, with a couple of exceptions. Clause 2, the intent, starts off:

> 'Without in any way limiting the operation and intention of this clause, any clause or term or provision of an award dealing with any of the following matters, excluding incidental matters, are excluded and displaced in whole by this agreement: rest breaks, incentive-based payments, annual leave loadings, observance of days declared under public holidays, monetary allowances, disabilities associated with the performance of a particular task, loadings for working overtime or for shift work, penalty rates and any other matter specified in the Workplace Relations Act 2006.'

I am not really sure what that means.

Ms SINGH - Those points are all excluded from the agreement?

Mr WHITE - They say they have been displaced in whole by this agreement.

The period of operation, if you remember the first one they offered that was knocked back, was a three-month agreement to coincide with the proposed introduction of WorkChoices. This is a five-year agreement. That is clause 3, period of operation.

CHAIR - When was this lodged, Mr White?

Mr WHITE - After WorkChoices legislation. It has been registered. There are a number of employees who have signed it because of the threats that were made to them - threats that we have already gone through.

Mrs BUTLER - Agree to work for six-and-a-half hours straight?

Mr WHITE - No, they do get their breaks. I am not saying they don't get them. They work with the permanent employees and they work in conjunction with them so when the smoko and crib breaks come up they go with them. So they do get them, but I'm just pointing out that in the agreement they don't have to provide them. They are a generous employer because they are giving them something they don't have to give by the agreement.

If I may go back to the one titled 'old', the other AWA, clause 13, the wage rates, and if you compare them to the wage rates in the new agreement - the one that has been registered; the one that doesn't have to pass a no-disadvantage test, just a fairness test under Howard's WorkChoices legislation - the rates of pay are exactly the same.

CHAIR - The previous one failed the no-disadvantage test.

Mr WHITE - Yes, but the no-disadvantage test has gone. Howard's done that for this fairer, simpler system.

Mr McKIM - So this has passed the fairness test, but failed the no-disadvantage test previously?

Mr WHITE - Exactly. It's marvellous what workers have to put up with.

Ms SINGH - Is that 'fairness' or fair less'?

Laughter.

Mr WHITE - On the next page, a continuation of clause 13, just above the dot points, the pay rates 'may' be reviewed on or before 1 May in each year. So it is a five-year agreement without any guarantee.

Ms SINGH - May day

Mr WHITE - There are two lovely words in there I like - 'may', may be or may not be reviewed. What does review mean? To me that means they may go up, they may stay the same, they may even go down. There could be a decrease in the wage rates over this five years, that is what that means to me.

Mrs BUTLER - And no description of whether you can have input in that either, is there? There is no spelling out of that review process.

Mr WHITE - No.

CHAIR - I know too, Mr White, one of the dot points refers to possible reviewing the pay rates - I will quote from the clause:

> 'The pay rates may be reviewed on or before 1 May'
>
> and it goes through the points -
>
> - 'the performance and profitability of the company;
> - the performance and profitability of the department;
> - the performance of the individual employee.'

Mr WHITE - I didn't worry too much about those, Mr Chairman, because it says we have 'the rates from the Abey review and the following factors may be considered'. So it doesn't mean anything.

CHAIR - In your experience, Mr White, does that mean the rates of pay for individual employees may now vary depending on their performance?

Mr WHITE - They are all individual contracts, Mr Chairman, so I suppose that applies to anyone anywhere who signs an AWA. They might all end up on individual rates. Pattern bargaining is outlawed, I know, and we are not supposed to have pattern agreements in union collective agreements, but these are all pattern AWAs. That is when they first sign them but when they are reviewed in May, they may not be patterned anymore because the wage rates may be different. They all do the same work.

The decision of the full bench, I referred to before, has been appealed in the Supreme Court by Skilled. Not being lawyers we are not really sure of the standing because Skilled didn't appeal the decision in the Commission in the first place and I believe - and this is only me believing it - under the Judicial Review Act that they're not entitled to take it there. But what Skilled is claiming is that the Federal Metals Award applies because they are members of the Australian Industry Group that are responsible for the Federal Metals Award. I think it is just a way of delaying things because the wage rates for a period were higher in that award anyway and, without going through the whole thing, I don't think it's going to give them any assistance and that's why they are delaying it. They do not have an application to the Supreme Court to stay the matter so the full bench decision still stands. Anyone else who does not have AWAs who want to tender for the work out there has to pay by the Zinifex Hobart Smelter Enterprise Award, so it might be a smart move on their part, I don't know. Do you want to have a break now?

CHAIR - If you are at a point where you think it is appropriate to stop and have a break, we can do that.

Mr WHITE - The only thing I would like to say, and because of the announcement yesterday by Kevin Rudd it might not be applicable now, but where I mentioned the Judicial Review Act - and I will table that, Mr Chairman - 72 on that first page goes through the provisions relating to the finality of decision of the full bench. This is where the solicitors acting for companies can actually - it is a long process; how long has it been Marshall, about five years?

Mr REEVES - Five years.

Mr WHITE - Five years - this whole setup about whether the award applies or not and as far as getting any money for anyone is concerned, we are no further forward than we were because it has been appealed in the Supreme Court.

Since WorkChoices legislation came in, all the teeth have been removed from the Federal commission. If somebody is under the Federal system, they have been underpaying an employee and we cannot reach agreement with them to fix up the underpayment, the only place we have to go is through the court system. My belief is that if somebody has been underpaid by $10 they are entitled to that $10. Who is going to go to court for $10? What if it was $1 000? There is a lot of cost in going to court. What if it was $10 000? If you go to court and you lose, you never know what will happen. We had a recent experience in the magistrates court with a wage claim, and I just do not know what is going on - you have a decision and suddenly you do not have a decision. But if you take it there and you lose you might be up for the employer's costs. The employer might well go out and get a QC, so it is pretty hard having to go through the court system and that is federally. Under the State system now you have the smart lawyers; you get a decision in the commission, it is appealed to the full bench or you get a decision of the full bench and, as I said, five years down the track we are still getting nowhere because it has been appealed in the Supreme Court and it is just sitting there in the Supreme Court. So the State system is now rather similar to the Federal system under WorkChoices because where can they take it, other than the Supreme Court? Then unions and employees are up for further legal costs. Under the State commission it is cost free.

CHAIR - And under the State commission, Mr White, it is my understanding that the full bench decision is normally applicable? Is that your understanding and your experience?

Mr WHITE - It is usually final. Yes it is applicable, for sure.

On the second last page that I have just tabled - excerpts from the Judicial Review Act - schedule 1 goes through decisions to which the act does not apply. I will not go through them all but on the last page, (c) through to (l), which is the TT-Line Gaming Act, once a decision has been made in the appropriate body that cannot be appealed in the Supreme Court. Obviously, seeing we represent employees and the financial costs are in there, we would like to suggest that the Tasmanian Industrial Commission decisions should not be appealed in the Supreme Court. I know that the employer bodies out there would not want that and the lawyers would not want it but workers would not mind seeing it that way. They go through the whole process of putting up a case in the Tasmanian Industrial Commission, having a decision from the commissioner, having it appealed, having a decision of the full bench and you are still nowhere. That completes that part of the submission, Mr Chairman.

CHAIR - All right, Mr White. That is an appropriate time to take a short break so we will adjourn committee proceedings for 10 minutes and resume in 10 minutes' time. Thank you very much.

The Committee suspended from 11.28 a.m. to 11.40 a.m.

Mr JEFFREY WRIGLEY, FORMER PLASTIC FABRICATIONS EMPLOYEE, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Sturges) - Welcome, Mr Wrigley. Mr White, we will hand back over to you and you can tell us where you want to go to now.

Mr WHITE - I will just hand up some documents, but I will go through those in a minute. Just briefly, Jeff Wrigley was employed by Plastic Fabrications Pty Ltd and he suffered a workplace injury. His duties prior to his injury were those of a labourer - building fish pens, some welding of pipes, physical lifting and moving of materials, fabrication, cutting materials, fork-lift truck driving, setting and de-setting a fork-lift truck on a continual basis - say, about 100 times a day. His duties after the injury were: changing sleeves, unthreading nuts, cutting plastic washers, sanding plastic washers, putting plastic washers on a bolt and threading nuts back onto a bolt. The date of his injury was 15 September 2005 and he went back to work on a return-to-work program. The duties are discussed and agreed.

I will go through the documents that I have handed up. The first one is a letter of employment from Plastic Fabrications Pty Ltd, dated 27 May. I put that up to show that Jeff was employed by Plastic Fabrications, with a commencement date of Monday 23 May 2005. The next one I table is an injured worker's report, just to show that Jeff suffered an injury at work on 26 September 2005. The next one I would like to table is a letter from Ian McDonald Consulting, which is a rehabilitation progress document - and Jeff will tell you a bit about that in a minute. Jeff returned to work on a return-to-work program and he will just give us a bit of history on that.

Mr WRIGLEY - When they put me off over a period of a little while I talked the doctor into letting me go back on a part-time basis, four hours a day, two or three days a week and then slowly tried to build it up, which ended up on the three full-hour days per week. This pretty much continued through on the proviso that I was at work to do as minimal work as I could, with restrictions of not being able to lift too much. I couldn't bend or twist. It was pretty much just a waste of time being there really, but that continued through until the end of it.

They had another yard around in Gormanston Road where they had a few casuals working on one particular order. Once they had finished that particular order, those casuals came back over to the main factory. They put a couple off on a slow rotation and then they came to me and said, 'Righto, we're downsizing and you've got to go'. I was on a full-time set up and in that time from then until just prior to Christmas, some casuals - one in particular -were slowly taking over every little job I was doing. It got to the stage where I would go to do something and that one person would be doing it, leaving me with nothing to do. He is still there now. As for their downsizing - they haven't downsized at all; they have put more on, but the casuals who were there prior to that are still employed. I was told only a week prior to Christmas what was going on.

CHAIR - This is Christmas 2006?

Mr WRIGLEY - Yes. Those particular casuals are still there, still doing the same things that I was doing.

CHAIR - Just again for my enlightenment, you were on workers compensation?

Mr WRIGLEY - Yes.

CHAIR - You were on a return-to-work program?

Mr WRIGLEY - Yes.

CHAIR - Were you dismissed? Under what circumstances did you leave the company?

Mr WHITE - Can I just interrupt, Mr Chairman.

CHAIR - I am sorry, I am just a bit confused.

Mr WHITE - The next document - and I hope everyone has it - is a Centrelink employment separation certificate. That tells you the reason for his termination was shortage of work or redundancy.

CHAIR - Are you tabling that document too, Mr White?

Mr WHITE - Yes.

CHAIR - We accept that as being tabled.

Mr WHITE - Jeff came in to see his union and we got in touch with the employer and let him know that the award was a weak award. There should have been payment for redundancy, a separation notification, instead of saying, 'You are not required.' There should have been a week's notice or a week's pay in lieu - that sort of thing. Also we said that we thought that there was an element of unfair termination of employment in it. He more or less told me where to go so we put a couple of notifications in to the State Commissioner, and I would like to table those please, Mr Chairman. They are form No. 2, application hearing in respect of industrial disputes, section 29(1), dated 21 December 2006 and another form 2, section 29A dispute, dated 25 August 2006. Somehow or other our office mucked it up. That should not be 25 August - they have not changed the date. They have copied it from another form off the computer. It was actually the same date, 21 December 2006, for the redundancy and the leave notice. The other one that I handed up was for unfair dismissal.

CHAIR - Right, we have both of those documents now accepted as evidence.

Mr WHITE - As Jeff said, another worker took over his job and that worker is still there, or a couple of workers are still there doing that work, so it was not for shortage of work. We do not know what the reasons were.

Mr WRIGLEY - Workers compensation.

Mr WHITE - Yes, we think that is probably what it was. The employer, Plastic Fabrications Pty Ltd, is a member of the TCCI, obviously a constitutional corporation. We know that we could not lodge a dispute - I won't say 'couldn't', we know we were not supposed to

lodge a dispute in the State Commission but we are not about to tell employers what the law is. We do not agree with the WorkChoices legislation but we are not about to tell them. Let them find out.

This employer went to his association, TCCI, and they certainly told him that he is a constitutional corporation, exempt from unfair dismissals. He employs fewer than 100 people. So under WorkChoices we do not know whether Jeff was unfairly dismissed or not. We have a strong suspicion that he was but there is nothing we can do about it.

CHAIR - So, clearly, Mr White, for the record, you are saying given the scenario that you have just put forward, pre-WorkChoices you were able to lodge an unfair dismissal claim; post-WorkChoices you were not able to lodge for an unfair dismissal.

Mr WHITE - That is definitely correct, Chairman.

CHAIR - I just wanted to clarify that.

Mr WHITE - The employer is not respondent to a Federal award. The award that he came under was the fibreglass and plastics award - a State award - so before the WorkChoices legislation there were a number of things we could have done. We could have taken the dispute to the commission for breach of section 30 of Industrial Relations Act.

CHAIR - Is this the State Industrial Relations Act?

Mr WHITE - Yes, the State Industrial Relations Act. Section 30 relates to disputes relating to termination of employment. I will read it out:

> 'The employment of an employee who has reasonable expectation of continuation of employment must not be terminated unless there is a valid reason for termination connected with it.'

It cannot be terminated because of, amongst other things, race, colour, gender, sexual preference, age, physical or intellectual disability.

Jeff has a disability at the moment because of the accident to his back at work. We think that is the reason he was dismissed. That is not open to us now; it was open to us to take that to the commission prior to WorkChoices but constitutional corporations came under the Federal system. There is nowhere we can take that. It might be able to go to the Anti-Discrimination Commission but that is not going to get a job back and it is going to take some time there anyway.

As far as the redundancy and the week's pay in lieu is concerned, the employer was advised by the TCCI that that was a provision of the award and that he should pay it. Because the award is now in APSA, we could not take it anywhere but it was referred off to the Office of Workplace Services. They would have been able to be involved in it and payment would have been made but they might have gone through the books and found a few other wrong things there for the other employees, I do not know, but there was nowhere where we could go with it because of WorkChoices and, as I said, it may have been an unfair dismissal or it may not have been. We just do not know. We would have

liked to be able to find out through the industrial umpire but WorkChoices has certainly discriminated against that.

CHAIR - Have you anything you would like to add, Mr Wrigley?

Mr WRIGLEY - No, not really; just that getting other employment is pretty much wiped out for anyone who is injured whereas previously, on my understanding, if the CFMEU had had that opening then I could have still been employed in that job until I could get that injury fixed, whether then I stayed working there or not, but as it was changed it virtually just throws it out the door and says you are on your own.

CHAIR - Thanks, Mr Wrigley. Mr White, back to you. I thank you for your time in giving evidence, Mr Wrigley.

Mr WRIGLEY - Thank you.

Mr WHITE - The next one, Mr Chairman, is in relation to, once again, Zinifex and it involves sick leave. The gentleman sitting at the back of the table is involved. He is Michael Van de Kamp who is the CFMEU's head delegate on site, and I would like Michael to come up and make some comment.

CHAIR - Certainly. We will get Mr Van de Kamp to take the oath and then we will proceed.

Mr MICHAEL VAN DE KAMP, ZINIFEX EMPLOYEE, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Mr White, back to you.

Mr WHITE - I will start by handing up some bundles which we will table as we go through, Mr Chairman. Has Mr Reeves got permission from the Chairman to intervene at any time? He is more involved in this.

CHAIR - Yes. I will just remind Mr Reeves that he is still under oath. If you care to make a contribution then please feel free to do so.

Mr WHITE - The first document handed up is a discipline report. It is a final written warning to Mr Van de Kamp and it is for taking sick leave. It says down the bottom:

> 'Whilst on paid sick leave from employment at Zinifex Hobart Smelter, Michael attended duties at the RSL as club president. This was for a period of eight to nine hours.'

I will refer to Mr Van de Kamp as 'Dutchy' from now on, if that is okay with the Chair.

CHAIR - If that is okay with Mr Van de Kamp it is okay with the Chair.

Laughter.

Mr WHITE - It is all he is known as. Dutchy was at work on the Friday before this Saturday. He has an ongoing problem with an ankle which was very badly broken a few years back. Dutchy was off work for a year and a half so you can imagine it is a rather significant injury. Most of his work at Zinifex involved being on his feet and it plays up every now and then. He was rostered to work on the following day, on the Saturday. He rang his wife and his wife arranged an appointment with his doctor. His doctor gave him a certificate to be off for the next day because his ankle could not take another 12-hour shift. Now Dutchy is also the president of the Sorell RSL club. On most days he calls in there to pick up mail and attend to some business, and he does not mind having a beer every now and then. His doctor's certificate did not say he had to stay home with his foot up, or stay in bed or on the couch or whatever. So he went up to the RSL club, did a bit of mucking around with a few things there, a bit of work on the computer -

Mr VAN DE KAMP - Yes, and picked up the mail.

Mr WHITE - He picked up the mail and did a bit of work on the computer for a short time. I think there might have been a couple of early starters before opening time and Dutchy let them in and I think they had a soft drink. We will not say on record it was anything else; they had a soft drink. I think Dutchy served them the soft drink for probably about 10 minutes and then he stayed there and had a few drinks himself. Now for some reason, and I do not know why, he must have been under some sort of surveillance from Zinifex, although we do not think it was that. We think somebody else from management or middle management was in the area, saw and recognised his ute outside and thought, 'Oh right, he's in there working'.

CHAIR - So you are not suggesting that somebody from Zinifex was one of the early starters, Mr White?

Mr WHITE - No, I am not suggesting that at all. So that is what he was warned for. It did not matter how many times we told them, and I think he had three meetings over it. I will go through the other documents because they will explain the situation as we go.

The next document I would like to table is a workers compensation medical certificate for acute anxiety. I cannot really read the doctor's writing -

CHAIR - Just paraphrase if you like, Mr White.

Mr WHITE - It was the stress caused to Dutchy at work. Dutchy is the head delegate - there are a number of delegates on site but Dutchy is the head delegate - and he had the strong suspicion that he was not a bad target for Zinifex, and I think Marshall will confirm this. They have a no-debit, no-credit sick leave clause in their agreement and they have had problems with some people taking probably excessive sick leave, or they think there is excessive sick leave. They thought, 'Well, this is a good example to make - the head delegate of the union so we will really put him under the gun'. There is a medical certificate from a doctor as the next document -

CHAIR - We will accept that as being tabled. That is the workers compensation medical certificate, form 1, and now you are moving onto the medical certificate, Mr White.

Mr WHITE - The medical certificate is dated 23 June 2006 with a couple of notes attached. It is dated 23 June and says that Michael was unfit to attend work on 24 June. It was questioned by Zinifex concerning the sick leave et cetera. The first attachment says -

> 'Michael suffers from episodic ankle joint pain on the right side more than the left. The condition is mainly a degenerative situation. He is able to perform his job without restrictions, but the occasional rest break will help in maintaining his efficiency and productivity. No medications are currently indicated for the condition at the present time.'

That was pretty much as we said at the start. In the doctor's opinion his ankle was not up to going back to work for a 12-hour shift.

In the sick leave clause you don't have to give a medical certificate for single-day absences.

CHAIR - This is the sick leave clause of -

Mr WHITE - The Zinifex Hobart smelter enterprise agreement.

Mr REEVES - The enterprise agreement says you can have four non-certificated shifts per year from 12 April to 12 April if you are a shift worker, and five 8-hour days non-certificated per year if you are a day worker.

Mr WHITE - Dutchy wasn't one of the people they had in mind who had taken excessive sick leave. So he didn't worry about producing a doctor's certificate but he was called in for a meeting. He had a fair idea what was going on and so he brought a doctor's certificate with him to that meeting. He didn't worry about handing it in before because he didn't have to.

The company reckoned that he got the doctor's certificate some time after to cover himself. We all know it is illegal for a doctor to do that, and I don't think too many doctors do it, but upon request the doctor provided this:

> 'As per our records, a medical certificate was issued to Mr Van de Kamp on Friday, 23 June 2006 to cover the next working day, 24 June 2006.'

It still didn't satisfy the company; they wanted the final warning issued. If you have a written final warning hanging over your head you know that with the next one you are out the door.

The next document I want to table is a letter from solicitors Ogilvie Jennings, dated 31 July 2006, with various attachments. Of course Dutchy didn't want that final written warning hanging over his head, and we didn't either. You have to look after your members, particularly when they are willing to be delegates and head delegates, knowing that game. That means a lot of things in a lot of places; you know you're probably not going to get promotion as quickly as somebody who is not a delegate of the union. There is a whole range of things and I won't go through them; we were trying to get it removed. There was contact between our lawyer and their lawyer. They refused to remove it.

CHAIR - Are you suggesting that before WorkChoices there was another avenue for you to pursue?

Mr WHITE - After we had exhausted the disciplinary proceedings, we would have gone straight to the Tasmanian Industrial Commission and they would have been able to arbitrate.

Mr VAN DE KAMP - The reason we put up the compo thing was that they said they had a query about my certificate. They suspended me and that went on for a period of three months before they could come to any resolution at all. So I was in limbo for three months and I had no recourse.

CHAIR - You were suspended from work?

Mr VAN DE KAMP - For three months, without knowing whether I had a job or didn't have a job or whatever. They wouldn't tell me; they kept ringing me up saying, 'We'll tell you next week'. Next week would come, I would wait for the phone to ring and two weeks later it still hadn't rung. So I ran them and said, 'Can I have a meeting?' I went back in. Three months this went on for, so I didn't know whether I was coming or going.

I went to Ogilvie Jennings and he advised me that I was completely in the right. I hadn't done anything wrong, but in no way could I afford the expense. I couldn't go to the commission; I never had any hope. I went to work and I provided all the evidence to say

that I was in the right. They acted as judge, jury and executioner. In the end it got down to the stage where they wanted to talk to my doctor and I do not even have privacy with my doctor anymore. I just did not have anywhere to go.

Mr REEVES - Mr Chairman, if I could just clarify, leaving Mr Van de Kamp sitting at home was a tactic. It was on full pay. Mr Van de Kamp is on a salary of $65 000 a year and they were happy to let him sit at home fully paid for three months while they tried to find an avenue. First of all it was the sickness and working at the Sorell RSL. When Michael covered that by saying, 'Well, I'm the President there and I attended some duties' and was honest in the interview, then they tried to focus on the doctor and the certificate, so all this time that they were scratching their heads obviously trying to find an avenue to dismiss Mr Van de Kamp, he was sitting at home on full pay, wondering what was going to happen.

CHAIR - Okay, and pre-WorkChoices, again for clarification -

Mr REEVES - We would have been straight into the commission.

CHAIR - you had access to the Industrial Relations Commission?

Mr REEVES - Yes.

Mrs BUTLER - As President of the RSL you would know that there was surveillance in the club?

Mr VAN DE KAMP - No, that was part of another thing. They said to me I was under surveillance but every time I asked, 'Can I have a look at what this surveillance is?', no-one would show me. I still have not seen it. I doubt if they have it. I asked that many times for it and they just would not show me. If they did have this surveillance for eight hours - which I could not see because I was not there for eight hours; I was there for probably a matter of an hour - and they took it to the commission, they would instantly dismiss you anyway. You would not have an argument. So you would think that they would come up with that evidence to say, 'Well, there you go' but, as I say, they acted like an executioner and I have nowhere to go. I cannot afford to go to a court.

Mr WHITE - It is pretty obvious that somebody saw his car outside and just made an assumption.

The next document, Mr Chairman, is a letter dated 1 September and it has a few other attachments. One of the attachments, a letter dated 28 September, is just a letter from Dutchy that disputes the whole thing. He makes this statement, and I might read through that:

> 'Dear Craig' -

That is Craig Wells and he is the superintendent of the area where Dutchy works -

> 'I refer to your disciplinary report dated 11 August 2006 and advise that I do not accept the final written warning indicated therein. The statement that whilst on paid sick leave I attended duties at the Sorell RSL as club

president is disputed. The reason for my visit to the RSL was merely social, however whilst there I attended to some club matters. The period of eight to nine hours, although in dispute, is inconsequential. The medical certificate issued by Dr McCardow stated I was unfit for work on the day in question.

During interviews conducted by yourself, Matthew Double and Brett Fletcher' -

Matthew Double is the HR Manager and Brett Fletcher is the General Manager -

'you were handed a medical certificate signed by Dr McCardow that stated I was incapacitated for work on 24 June 2006 due to an ankle condition.

At no time have you established that my medical condition prohibited me from predominantly resting my ankle at a place other than my home. A significant number of medical conditions may necessitate workers to take sick leave but not preclude them from activities external to their homes.

I have been accused of taking sick leave on a significant number of Saturdays. A simple perusal of my records shows this accusation to be false. Because I have not previously been counselled in relation to any perceived misuse of sick leave entitlements, it appears the company's first reaction to instigate surveillance was extreme and prejudicial.

During the four interviews conducted over a period of about five weeks, not only have aspersions been placed on my character but at times the professional conduct of my doctor was questioned.

I have exceeded the company's sick leave requirements by providing a medical certificate. When the validity of the issue and status of the certificate was questioned my doctor then validated the authenticity by way of letter.

My perception is that procedural fairness has not been followed by yourselves and in fact I feel there to be an element of discrimination. The union and myself have repeatedly requested proof by way of evidence of your allegations. No such proof has been provided yet you have chosen to discipline me. Obviously this is based on your opinion only.

Finally, because I have complied with my contract of employment I reiterate my non-acceptance of the final written warning and insist it be removed from my records.

I await your early reply.'

All they did was sent a copy to Dutchy of a letter that they sent to us where they just refused to accept any statements put forward and the final written warning stands.

The next one I would like to table is a section 29(1) dispute, dated 3 November 2006, to the Tasmanian Industrial Commission. We knew we did not have any jurisdictional right to go to the commission but we thought we would just try it on. The letter came from Minter Ellison and I would like to table that. That is by way of a fax from Richard West, dated 10 November 2006.

CHAIR - We accept those documents as being tabled.

Mr WHITE - That questions the jurisdiction of the Tasmanian commission to hear it.

Mr REEVES - If I can just supplement Mr White there, the lawyer's name on the bottom of that is Mr Richard West from Minter Ellison. They quite frequently fly him from Melbourne to represent them in the State commission. Since WorkChoices he was unable to come to the State commission but he laughingly used to say he was a great advocate of the State system because, reportedly, he was on $700 an hour. So he missed the State system when it went, too.

Mr WHITE - The next one from Minter Ellison, which I would like to table, is dated 17 November 2006. It more or less does the same; it questions the jurisdiction.

CHAIR - So we have one from Minter Ellison dated 10 November and one dated 17 November.

Mr WHITE - Yes, and I won't go through those. The next one that I will put up is a transcript of proceedings. It says 'before Commissioner T.J. Abey', but it wasn't; it was before Deputy President Shelley in matter T12835 of 2006. That was where we went to the commission and argued the matter with Richard West about jurisdiction. We had found some matter that the CFMEU mining division had run against Newcrest Mining Limited. That was in New South Wales. That said that they wanted an order from the commission that would not be enforceable while WorkChoices legislation was in place, but if WorkChoices legislation disappeared then the order would relate to the award. They actually won that. All we wanted to do was to get something on the transcript about the whole story of what had happened with Dutchy. We managed to do that; we have it on transcript. All that happened in the end was that it was adjourned indefinitely. I know that I am running out of time so I am not going to go on any further about the transcript, merely to say that the jurisdictional argument of Richard West was correct: the Tasmanian Industrial Commission, because of WorkChoices legislation, doesn't have a jurisdiction here. But for WorkChoices legislation, once again, I think we could have had the whole matter fixed and I am very confident that Dutchy wouldn't be on a final written warning.

CHAIR - Have you tabled that transcript, Mr White?

Mr WHITE - Yes.

Mr REEVES - The next employee Mr White is talking about is in the same area as Dutchy. Mr White mentioned that the name of the superintendent on one of the letters was Craig Wells. Just to set the scene, he was a new arrival superintendent in the cell room. There was some misuse of sickness in the cell room and this is how they were trying to address

it. What better way than to target the senior delegate. The next matter will further enhance what they were up to under WorkChoices.

Mr WHITE - Mr Chairman, I will go through these and table them all together. The first one is a letter from the CFMEU, which for some reason doesn't have a date on it. It refers to 'Shane Langford warning'. Attached to that is a letter from Matthew Double, HR Manager to Dutchy. Also attached to that is a letter from Dutchy to the HR manager in relation to Shane Langford and I will read that:

> 'To whom it may concern
>
> The CFMEU and Shane Langford have put the matter of a warning for excessive sickness in dispute for the following reasons:
>
> A three-monthly review has not been conducted since November 2005 as per disciplinary procedures policy.
>
> EBA states performance and attendances taken over the previous one year and not six years as stated in the discipline report. Although a substantial amount of sickness has recently occurred, it was an unavoidable question for the hernia and surgery. This was subsequently supported by medical certificates.
>
> As per the dispute procedure, Shane and the union would expect a reply to their concerns in the near future.'

Without going through too much of that, the next one tabled is a letter dated 21 November 2006, from the union. Attached to that is a letter dated 14 November from Matthew Double and attached is an excerpt from the Zinifex Hobart Smelter Enterprise Agreement 2004. On the second page of that right down the bottom it says:

> 'Salary payments may be discontinued or reduced by the General Manager following consultation as part of the review process, having due regard to relevant medical assessments on the recommendation of the departmental manager' -

CHAIR - Sorry, Mr White, I just come back on rewind. I have been reading some of these documents, so we have the CFMEU letter dated 21 November 2006 being tabled, we have the Zinifex letter signed by Mr Matthew Double dated 14 November having been tabled and we are now onto the Zinifex Hobart Smelter Enterprise Agreement.

Mr WHITE - Yes.

CHAIR - Thank you.

Mr WHITE - It is just an extract from it about sick leave.

CHAIR - Just for the sake of clarity I wanted to make sure that we were on track.

Mr WHITE - The next extract is also out of the EBA. It but it goes to 2.42 - Procedure flow chart and notes. This is for the disputes resolution procedure.

The story there is that Shane Langford, on my understanding, over the years has probably taken a reasonable amount of sick leave but he was off work with a doctor's certificate - he had a hernia operation - and when he came back to work he received a warning for excessive sick leave, even though he had a doctor's certificate. We have asked them to remove that warning and, once again, they will not do it. It is just exactly the same as the situation with Dutchy, there is nowhere to go with it. But we just put everything in process because if anyone is sacked then I think, even under WorkChoices legislation, because they have 100 employees, we can actually take that to the commission although they might say it is for 'operational needs'.

Mr REEVES - But an important point in Mr Langford's case is that, because they know WorkChoices is in and the employee cannot appeal to anywhere, instead of looking at his absenteeism for the last 12 months, they chose to look back at his record for six years. Where do you go with that?

Mr WHITE - I am going to jump around a little bit. This is one I really want to get up. I will probably lose myself by jumping around. This one is a copy of an Australian Workplace Agreement, which I would like to table. It is the Marquis Hotel/Motel Agreement. It is nothing to do with our industry, we realise that, but one of our members who was in between jobs applied for and got a job at the Marquis Hotel working in the bottleshop. He only stayed there for about six weeks, I think. He was given this AWA and he thought it was so bad he should give it to us. I would like to take the committee through this.

This agreement is okay under WorkChoices legislation. We go to page 4 at 6.5 - Policies and Procedures. It says:

> 'The employer agrees to comply with any policies, procedures or directions that may be displayed on the employer's notice board from time to time.'

Until you sign a contract of employment you don't know what you are going to be working under because the policy procedures change down the track. The employer might come up with any policy procedure, 'Every day you come you lick my boots'.

I will go to clause 9 on employment status - 9.1, casual employment. I don't know what the relevant award says but 'casual employees work without expectation of continuous work, although this does not prevent a casual employee from working regular hours on a regular roster'. Nearly every award I have seen says that if you work on a regular basis on a roster you are not going to be a casual. It then goes on:

> 'Unless agreed by the employer, a casual employee is not entitled to receive a conversion to part-time or full-time employment.'

So I would say that this award definitely has something there about conversion. It goes on:

> 'Casual employees are paid on an hourly basis and this rate includes all work that is performed on week days, Saturdays, Sundays, public holidays and no other penalties or allowances are payable to an employee. Penalty rates, allowances or loadings contained within the award are excluded from this agreement. Casual employees are not entitled to any additional benefits of employment such as annual leave, paid personal leave, severance or redundancy pay. The ordinary hourly rate of pay for casual employees is contained in schedule A.
>
> Hours of work: ordinary hours of work.
>
> The ordinary hours of work of an employee may be worked over any day or the week, Monday to Sunday, inclusive of and shall be arranged by the employer to meet business requirements.'

10.3 - Rest breaks - says:

> 'An employee is entitled to an unpaid meal break of 30 minutes for each shift where the employee is required to work six or more hours. Meal breaks are to be taken at a mutually-convenient time, having regard to the operational requirements of the business.'

So it doesn't say you get a break after six hours work; it says you get a break if you work six or more hours. So if somebody is on a 12-hour shift they might work 11-and-a-half hours before they get their break. Then the boss is probably going to say, 'What do you want a break now for? You finish in half an hour'.

The last words at the bottom of this say:

> 'The meal and rest-break provision contained within the award are excluded from this agreement.'

We all know, I think, that there are protected entitlements under the WorkChoices legislation. They keep telling us that, that certain entitlements are protected. Among those are meal breaks, rest breaks, public holidays and penalty rates. What they don't tell us is that it goes on that those entitlements are protected unless written out in an agreement - or cashed out in an agreement. Public holidays are deal with on page 7, in 11.1, which says:

> 'The employee acknowledges that work on a public holiday should be expected as a result of the nature of the services provided by the employer and its operational requirements.
>
> Designated public holidays.
>
> This agreement acknowledges public holidays in accordance with the Tasmanian Statutory Holidays Act 2000. The public holiday provisions contained within the award are excluded from this agreement.'

Another protected condition gone.

> 'Remuneration.
>
> An employee who works on a public holiday will be paid the ordinary rate of pay as specified in schedule A of this agreement.'

Clause 13.1, excluded allowances, says:

> 'All allowances contained within the award are excluded from this agreement, including the following' -

Everything is excluded now, meal allowance, the whole lot. I hope no-one goes to drink at the Marquis after hearing this.

The next one is meal. This is a little benefit:

> 'An employee who works more than six hours in a shift is entitled to select a complementary meal from the staff menu' -

not the 'menu', the 'staff menu'. I don't know why the staff menu is separate from any other menu -

> 'as varied from time to time. The meal is not transferable to any other person and is only to be consumed at a time that is convenient to the needs of the workplace as determined by the employer.'

I think I mentioned last time I was here about a George Town hotel where a drink valued at $1.50 formed part of the wages. You can bet when they did a fairness test - if they did one - these were determined to be part of the wages. It says:

> 'The employee is entitled to one standard drink at the completion of each shift. The selected drink is to be consumed on the premises by the employee.'

It goes on about whether you are under 18. So at least they are not going to let somebody who is under 18 have that drink.

I emphasise 'on completion', so it is part of your wages; you have to stay on the job after you finish work to collect the rest of your wages.

Schedule A, rates of pay - and these are casual rates - $17.85. Attached to this is schedule B - Classifications. The way I read it, the classification for a bar person, level 2, is $17.85. You can go to a higher classification and still be serving behind a bar but that is the last classification so it is probably what they'll get. A waiter or waitress is $18.50. Level 1, $16.95, is a kitchen hand; level 2, $17.85, is a breakfast cook; level 3, $18.50, is a cook; level 4, $19.70, is a chef. Down the bottom it says -

> 'the employer agrees to comply with the Australian Fair Pay Commission standard for the duration of this agreement. The employer is not otherwise legally obliged to offer pay increases to employees.'

I wanted to get that one out.

CHAIR - We will accept it as being tabled, Mr White.

Mr WHITE - Thank you, Mr Chairman. If these things weren't so serious they'd be comical - when you read something like that. I don't know how they go at getting employees there.

Mr VAN DE KAMP - Zinifex affects so many people, being a big employer in Hobart. Being the senior delegate out there I have a lot to do with the industrial side. It is really frustrating to a lot of our people there, especially now that we are negotiating new EBAs. Although some of the big companies say they don't want to take on WorkChoices, they are slowly creeping in. It means that companies seem to be judge, jury and executioner and we've just got nowhere to go. A lot of the blokes now say, 'It's not even worthwhile coming to the delegate or coming to the union because the union's hands are so tied, unless we do something ourselves'. The only thing we can do is withhold our labour.

With the way work is done at the moment - we're on a four-day roster - each shift is worth $300 to us. People can't afford to drop a shift to force, even if they know they're in the right. They can't withhold their labour because we're not allowed to do that anymore. We can't go anywhere to have it arbitrated and we just have to rely on the company's goodwill to do it. With a big company like Zinifex, I'm not called 'Dutch'; I'm called such-and-such a number - that's all I am. I do not have a name; I have a number. Someone in Melbourne is running the show and that's all we are. At the moment it is really frustrating that we have nowhere to go.

I have no worries about going to a commission. If I can put up my evidence or my facts and say, 'Here are my facts, there are the company's facts, someone make a decision', I've got no worries about abiding by that decision. But at the moment I can put all my facts up and the company doesn't have to put anything up, and they can still put you on a warning or they can sack you. The only way you can go is down the discrimination path and usually that doesn't keep your job. They might say, 'Yes, you have been discriminated against', but that's it; all you have is the moral satisfaction.

CHAIR - Thanks very much, Mr Van de Kamp, for coming in and giving evidence today.

Mr REEVES - Mr Van de Kamp forgot to tell you the punch line - that management is now saying to the employees that we're bringing in a 'fair treatment policy'.

Mr WHITE - An employer in the north of the State, Crossroads Civil Contracting Pty Ltd, is one I am sure everyone is going to hear a little more about because they have already been to court for a directions hearing. There is a police investigation into some of the goings on. He does most of his work with the Launceston City Council. I will be interested to see what a certain person who sits upstairs does - the Mayor of the Launceston City Council. There have been a lot of things there. In fairness, he was the one who called the police in but they are still contracting to the council at the moment.

Most employees were paid, back in the past, a flat rate of $15 per hour. This was all before WorkChoices. The first document I have is from the commission, a decision in relation to T-12546 of 2006.

CHAIR - Are you going to refer to that now Mr White?

Mr WHITE - That is a decision from Deputy President Shelley in the Tasmanian Industrial Relations Commission. It is in relation to a breach of the award by Crossroads Civil Contracting Pty Ltd in relation to an employee by the name of John Bailey.

I will just go to 113, which is on page 20. The 'Mr Johns' referred to in there was the foreman; it is towards the end of 113 on the last two lines. Mr Johns was the foreman of the asphalt crew. Mr John's unchallenged evidence was that the asphalt crew worked eight to 12 hours a day, five days a week, plus weekends when needed. At 114, Deputy President Shelley says:

> 'I find that Mr Bailey was neither engaged nor paid as a casual employee and was not a casual employee under the terms of the award.'

At 131 over the page she gives her reasons:

> 'For the reasons set out in this decision I am ordering that the employer pay annual leave' -

I will not go through the amounts for public holidays, stand-downs and overtime but it all came to about $16 480. The stand-downs that she mentions were if it rained or there was no work available. They work under the State Building Construction Industry Award civil division, casual or weekly hire. Casual is somebody who works on a casual basis, not someone who has regular work, so there are periods where he was not given eight hours work a day or 38 hours work a week. That is what that related to.

The next document is in relation to statements from a Jamie Brooks, who is a current employee of Crossroads. It talks about what led up to his signing an AWA. He was pressured into signing it. He was put on what he calls 'punishment' from 19 October 2005 until 26 October 2005. The punishment involved being taken away from his normal work to be put in the shed. Instead of getting his nine, 10 or 11 hours a day, he was restricted to eight hours a day, just sweeping up the shed for three days. He said he had some weed spraying and that sort of thing.

The next item I would like to table is a copy of extracts from a transcript T-12268 of 2005 before Commissioner Abey. I would like to go to the second page. I have evidence from Douglas John Gardiner who was an employee of Crossroads. The next page over at PN437 says:

> 'Q. Who are you employed by, Doug?
>
> A. Crossroads.

Q. How long have you worked with Crossroads?

A. Four years, approximately.'

In 498 over the page:

'Q. Are you now working under an Australian Workplace Agreement?'

His answer was:

'Sort of'.

Q. Before that, what award did you work under?

A. Wouldn't have a clue.

That was pretty much the way that company ran; they didn't have a clue what they were supposed to get. Then at 519:

'Q. Have you ever been paid annual leave during your employment with Crossroads?

A. No, never.

At 534: Doug Gardiner being cross-examined by Mr Brady from the TCCI representing Crossroads, was asked if anyone tried to pressure him into signing the agreement. He replied:

'What do you mean by pressure me? I can go through the whole lot if you like'.

Of course they didn't want him to go through the whole lot. Down below at 541, in answer to a question, Doug said:

'We received the papers and had two weeks to look at them and see what we thought. Our boss said to us, "I'm not allowed to come near you or say anything about this for two weeks" , the second day we were in the office.'

So here he is getting negative vibes - and then there is a bit of a statement about 'If things don't go right, I can close the place down'.

The next document attached to that is from the Office of Employment Advocate. It is a letter to Doug Gardner about his AWA. Then there is a fax from the CFMEU to the Office of Employment Advocate and attached to that is a letter from Doug Gardner:

'Dear Sir

I am replying to your letter dated 25 October. I signed the AWA after reaching agreement with my employer that my wage rate would be $18 per hour. All work after eight hours per day would be paid at time and one

> half. All public holidays would be paid as per the award; annual leave entitlements would continue as per the award - i.e. four weeks' paid annual leave. I consented to the AWA along the above lines. The employer agreed to these conditions before I signed the AWA. After I signed the appropriate paper, my employer reneged on all the conditions, except for the wage rate.
>
> My preference was, and is, to work under the award but because of the intimidation I saw applied to other employees who refused to sign I decided to sign what I thought was a renegotiated AWA. My employer called all of us employees in … negative vibes about the AWA. He then said if things go wrong he could close up shop any day and then reopen somewhere else. I wish to withdraw my consent to the AWA.'

I won't go through the rest of it. The first document is just a summary of parts of the AWA -

CHAIR - Mr White, is this a summary of the CFMEU?

Mr WHITE - Yes. The second document is a Crossroads Civil Contracting AWA. It is 2005. As I said, it precedes WorkChoices. It is signed by Jamie Brooks. He is the employee that I mentioned who was under pressure to sign it and under punishment. This is being investigated now by the AWS. We have taken it all down there and they are going to conduct their investigation, so we will see what comes of it.

Clause 6 in the agreement describes the employment as permanent, with entitlements cashed out. Clause 8 is a rather interesting one. On page 7 it says:

> 'An employee may take external work with the approval of the employer.'

So you are not allowed to go and do a second job at weekends or something like that without the approval of the employer. As I understand it, I think it is still the same under WorkChoices, before WorkChoices an employee could be fined for breaching an AWA, which is interesting. That is a change to any other system that has been there. An employee could not be fined for breaching an award or an agreement, a collective agreement. An employer could, but an employee couldn't. If somebody takes a second job without the boss's approval, is he in breach of his agreement, would he be fined, I don't know? You would have ask John Howard that one.

Clause 9 goes through the usual work hours:

> 'An employee shall be required to be available to work at least 38 hours per week. However, both the employer and the employee acknowledge that this figure may be altered to allow for inclement weather or increased or decreased business demands.'

So even though you are said to be permanent, very possibly you can get fewer hours - and they will during winter periods. You can't do a lot of bitumen sealing in winter, so they will get less than their 38 hours.

Clause 10, Saturday work - towards the end it says:

> 'In the event of Saturday work being required, the employer will pay a weekend loading of time and one half' -

150 per cent -

> of the ordinary hour rate for all hours worked.'

But later on it talks about all hours being paid at the ordinary rate, and that's what occurs anyway.

I have a conflict with clause 18. Clause 18, on page 10, the last sentence, says:

> 'The above rates are an all-up loaded rate, inclusive of annual leave and leave loading and are based on an average 45-hour working week. This is the hourly rate for all hours work.'

So I don't know which one applies, the weekend work or that one.

We have additional benefits on the back of the thing, and that is 76 hours paid loading, 17.5 per cent, which means two weeks' annual leave. The hourly rate is $20 per hour. The calculation I have on the back of the first one I tabled, the CFMEU comparison, the award rate for a plant operator, group 4, the hourly rate is $18.52. An allowance of 84 cents an hour, which equates to two weeks' annual leave with the leave loading - because they're only getting two weeks under this, so the other two weeks' annual leave from the award - 78 cents is allowed for the 11 public holidays rolled into the rate, and that comes to $20.14. That is for a permanent employee who will be getting 38 hours a week and be getting overtime and that sort of thing. So that is already 14 cents above the rate that they will be getting in this thing.

There is another $1.44 there, allowing for an extra seven hours to make up the 45-hour week, because that's what they work for their $20. That extra $1.44 is assuming that all those extra hours are at time-and-a-half because the award provision is time-and-a-half for the first two hours, then double time; Saturday, time-and-a-half for the first two hours and then double time after that. So that $1.44 would be the absolute minimum. So that is $21.58 but because the award prescribes for 38 ordinary hour per week, the AWA allows less, the actual amount less than the award would be far greater than the $1.58, plus there is the allowance for penalty rates for overtime, public holidays and weekend work. That then shouldn't have met the no-disadvantage test anyway, but it is fine now; under WorkChoices that agreement is fine. In fact, $20 an hour and getting two weeks' annual leave a year is probably a good AWA in comparison to most. Fair dinkum, look at it compared to that Marquis of Hastings. So it is rather sickening when an AWA that doesn't meet a fairness test compared to the award is a good AWA.

CHAIR - And that AWA is applicable now, is it, Mr White?

Mr WHITE - It is applicable now, yes. It would be interesting - nobody really knows yet, even the AWS doesn't know - but I believe that if they investigate and there are two people who were intimidated - let's say they were intimidated into signing that - they

think that all AWAs that that company has would probably just be torn up and treated as if they never existed. It would rather interesting if that happened. We will see.

CHAIR - Just for clarification, Mr White, are you indicating that this AWA that you have tabled, the one that you are referring to now, failed the no-disadvantage test?

Mr WHITE - That fails my no-disadvantage test, certainly.

CHAIR - In relation to comparison with the award but it is now applicable under the new legislation?

Mr WHITE - The no-disadvantage test doesn't apply now. It is a fairness test, as Michael said before. The employer signs a statutory declaration that it meets a fairness test, so who is it fair to?

The one with 'R1' marked up the top is an exhibit from the commission, dated 14 April 2005. That was the first contact I had with this employer. There is probably a problem in the way he pays his employees. It was to check his wage records. I just want to indicate that date - 14 April 2005. Attached to that is a copy, dated 16 April 2007, of the respondent's initial correspondence relating to claims made by Mr Jamie Brooks. Jamie Brooks lodged a complaint in the Anti-Discrimination Commission against his employer and this is the employer's response. On that first page, in relation to the AWAs, it says:

> 'Advice was provided by the TCCI that Crossroads should adopt Australian workplace agreements as the industrial instrument. We accepted the TCCI advice and subsequently provided instructions to draft an Australian workplace agreement that would cover our employees. The TCCI undertook the no-disadvantage test on each classification and provided a template draft AWA.'

On page 5, second paragraph:

> 'Crossroads had in the past paid additional sums and provided differing benefits to employees compared to the industrial instrument. As our arrangements were being questioned by the CFMEU' -

this shows this was all done after the letter of 14 April -

> 'the TCCI provided advice to me that employees who decided not to sign the AWA should be paid strictly in accordance with the industrial instrument.'

Page 6 is a beauty because he is saying that this is evidence that he did not discriminate against Jamie Brooks, yet he is saying in this that he did. It will be interesting to see what the commission does with it. The third paragraph down says:

> 'The AWA was based on a loaded rate of pay, inclusive of cashing out leave entitlements and with the provision built-in into the loaded hourly rate of pay for the employee to work up to 45 hours per week when required at the loaded rate of pay. The business could not compete if it had

> to pay overtime rates as per the award for hours worked in addition to 38 per week. To the best of my knowledge, our major competitors did not pay overtime.'

That, to me, is saying that this boss knows that the AWA, with the loaded-up rate for 45 hours, is cheaper for him than paying 38 hours under the award plus overtime. He says it - 'This business could not compete if it had to pay overtime rates as per the award'. So he knows that the AWA prepared by the TCCI didn't meet the no-disadvantage test, but meets the fairness test now.

> 'As a general rule, Mr Brooks would turn up for work at our Rocherlea department and would then travel in a company vehicle along with other team members to the work location of the day. During the period in question, demand for our operations was quite strong and there were incidental tasks that required attention.'

You recall what I read about a Colin Johns, who was the bitumen foreman; he said they worked eight to 12 hour days, depending on how busy they were. This boss is saying this was during a busy period and there had been a requirement for overtime. He goes on to say:

> 'As Mr Brooks had not signed the AWA, and the rest of the Crossroads team had, it would be unfair for both the Crossroads team members and for Mr Brooks to be treated differently in relation to finishing times and to payment for hours worked in excess of 38. Logistically it is difficult to return one man back to the depot.'

That was the reason why he did not go out with the rest of the work crew, when I was saying he was on punishment. Jamie claimed he was told that if he didn't sign the AWA he wouldn't be working any more than eight hours. The boss has confirmed that. The main point of it is to show that that agreement would be fine now; in fact, as I said, in comparison, it would be a good AWA.

The next item I have put up is from T-12546 of 2006 - E.P. Shelley, reasons for decision. At 114, which is the first page over:

> 'I find that Mr Bailey was neither engaged nor paid as a casual employee and was not a casual employee under the terms of the award.'

Yet the employees under the AWA, even though they are called permanent employees, are not guaranteed their 38 hours. They do not get their public holidays. They only get two weeks annual leave. They are treated as casuals. They are called permanent but in fact they are somewhere between probably permanent part-time and casual. There is no provision in the award for permanent part-time. There is no provision for part-time in the award, except for return from maternity leave. They are all blokes so I do not think any of them will return from maternity leave.

I have further evidence from people like Senator Barnett, because he usually has a letter to the editor saying it is all misconception and rubbish and that people are better off under WorkChoices. I say it on record, and I hope the Libs down here read it, that if

Guy Barnett wants to come along I am willing to show him. We have a number of members, some we have mentioned here today and some we have not mentioned, who are quite happy to talk to him about how they have been disadvantaged by WorkChoices, and these are only the ones who have come forward.

Like I said before, employees only go for a wage claim for underpayment of wages to the Industrial Commission once they are no longer employed. They do not want to put their hand up when they are employed. So how many out there at the moment have not put their hand up? This is only the tip of the iceberg. The sooner the election comes around and Howard is rolled out, the better.

CHAIR - On that note, Mr White, I thank you very much for your contribution this morning. I also thank you, Mr Reeves, for your contribution and the evidence given today.

THE WITNESSES WITHDREW.