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SENATE

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

Reference: Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008

TUESDAY, 4 MARCH 2008

P E R T H

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SENATE STANDING COMMITTEE ON

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

Tuesday, 4 March 2008

Members: Senator Marshall *(Chair)*, Senator Watson *(Deputy Chair)*, Senators Boyce, Campbell, Fisher, Sterle, Stott Despoja and Wortley

Participating members: Senators Abetz, Adams, Allison, Barnett, Bartlett, Bernardi, Birmingham, Boswell, Brandis, Bushby, Chapman, Colbeck, Coonan, Cormann, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Heffernan, Johnston, Joyce, Kemp, Lightfoot, Ian Macdonald, Sandy Macdonald, McGauran, Mason, Minchin, Murray, Nash, Parry, Patterson, Payne, Ronaldson, Scullion, Troeth and Trood

Senators in attendance: Senators Cormann, Fisher, Marshall, Murray, Siewert, Sterle, Watson and Wortley

Terms of reference for the inquiry:

To inquire into and report on:

Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008

WITNESSES

Committee met at 8.59 am

KUHNE, Ms Marcia, Manager, Workplace Relations Policy, Chamber of Commerce and Industry, Western Australia

LEE, Mr Daniel, General Manager, Employee Relations, Chamber of Commerce and Industry, Western Australia

BLYTH, Mr Geoff, Group IR Manager, Compass Group (Australia) Pty Ltd

WARD, Mr Chris, Manager, Human Resources, Ertech Pty Ltd

NOONAN, Mr Tony, Group Human Resource Manager, Macmahon

CHAIR (Senator Marshall)—I declare open this public hearing of the inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008. On 14 February 2008 the Senate referred the bill to this committee for inquiry. The committee is now due to report on 17 March 2008. The purpose of the bill is to give effect to a major election commitment by the government to introduce changes to the industrial relations system to come into effect in 2010. The workplace relations amendment bill of 2008 amends the Workplace Relations Act 1996, providing for a number of changes to the framework for workplace agreements and to enable the process of award modernisation to commence.

Before the committee starts taking evidence, I advise that all witnesses appearing before the committee are protected by parliamentary privilege with respect to their evidence. This gives them special rights and immunities, because people must be able to give evidence to committees without prejudice to themselves. Any act which disadvantages a witness as a result of evidence given before the Senate or any of its committees is treated as a breach of privilege. Witnesses may request that part or all of their evidence is heard in private. However, I also remind witnesses that giving false or misleading evidence to the committee may constitute a contempt of the Senate.

We will commence our proceedings with witnesses from the WA Chamber of Commerce and Industry, the Macmahon company, Ertech and the Compass Group. I welcome those witnesses. Is someone going to make an opening statement?

Ms Kuhne—Yes.

CHAIR—We will follow up with questions.

Ms Kuhne—Thank you very much indeed for sitting in Perth. We very much appreciate the opportunity. Our key concerns with the bill are essentially that the government promised a transitional arrangement. They promised that employers would be given a significant period—in fact, five years—to transition out of Australian workplace agreements into collective agreements and into their own arrangements. The explanatory memorandum reflects that philosophy, as does the second reading speech. It reflects that there is a need for certainty and it recognises that businesses have structured their labour costs around particular sets of circumstances.

In WA, AWAs and their predecessors, state workplace agreements, have in fact been in place for some 15 years now, so some employers have become totally reliant on Australian workplace agreements. They need some time to transition out, and they have been preparing

the transition process based on the promises that were made in the election platform in Labor's policy. There are many cases where members in fact are no longer aware of the detail of awards that might or might not in fact cover employees who are currently covered by Australian workplace agreements.

We have a situation now where members' business is completely reliant, in some cases, on the Australian workplace agreement system, so they have been relying on the fact that they would be able to transition out of those arrangements. What the bill does, however, is it makes the individual transitional employment agreements inaccessible to employees who were previous employees of an organisation. That presents a significant problem, particularly in the construction sector—also in some other sectors—which relies on hiring and firing employees for a project.

What happens is that employees are hired, they stay for the extent of the project, which could be anything from six weeks to six months, to a year and onwards. At the end of that period, the services of those employees are terminated and they are paid out all of their entitlements, but they will subsequently be rehired by that same employer for another project, and it could be as soon as six weeks later. So in terms of the transition bill, there could be a whole range of employees who could have met the requirements of the bill in that they were employed on an AWA as at 1 December, but they may have finished with the company because a project finished and may want to return to the company for a new project that commences but would be unable to be signed up on one of these ITEAs because they would be regarded as previous employees. We see that they would fall into that category; they would fall into the abyss. They would not be able to be offered ITEAs, because they would be regarded as previous employees.

That creates a particular problem for the construction sector, where you could have a whole workforce on AWAs. Someone leaves—that person might have left at the end of December or in January—and someone else comes in. The person who fills the job is most likely to have been someone who had previously been employed by that employer. With the arrangements that are envisaged under the bill, the employer will not be able to offer the same set of arrangements that were covered by the AWA or an ITEA. The employer is going to be forced to, very quickly, either develop a collective agreement or be faced with somehow working out what arrangements they can make for that employee. The award might no longer be appropriate; the rates that the employees would have been paid under the AWA would far exceed what prevails in the award. So the employer is going to be left with a situation where they will have a group of employees on AWAs, some employees might be on ITEAs and then they will have this other group that the employer would like to employ because they have all of the skills—they have been trained in the employer's policies and procedures, so they are the sort of person that they would like to employ—but if they re-engage them they have to ask, 'What is it that we are going to be able to effectively do with those employees or that employee to utilise them?'

In a nutshell, that is what the concerns are around. It is particularly a problem in the construction sector, which is why our members from that industry are with us today, but some of those issues also arise in the home care industry, in the hospitality industry and in the retail sector. There are some other issues that I have covered in the submission that go to

administrative issues such as the lodgement process and the hierarchy of instruments that we think need to be included in the bill for purposes of assessing an agreement for the no disadvantage test. I will leave it at that. Thank you for your indulgence.

CHAIR—Thank you. Does anyone else want to make an opening comment?

Mr Lee—I do. I head up a group providing employee relations services to members in the construction industry, particularly the big engineering projects around the state. I suppose I need to reiterate that the nature of the employment relationship is that there is a series of contracts. When companies talk about their core group of employees, what they typically mean is that they have a group of employees that follows them from project to project to project interspersed with either periods away from the company working for other companies or periods of unemployment. That is reflected in the building trade's construction award, where you have things like follow-the-job loadings, so it is recognition of the discontinuous nature of the industry. The opportunity to have an ongoing employment relationship is simply not there; it is driven by the project nature of the industry. So you will have companies with employees who have followed them from job to job over what is sometimes a very long period of time, but in between those projects they would have gone off and worked for someone else, gone overseas—those sorts of things. This occurs particularly in the north of the state, where a lot of work is seasonal in nature—during the summer wet season very little work goes on. I suppose that is reiterating the nature of the employment and that the impact on this particular provision under the bill has far greater impact on this sector. On other sectors it might be a minor inconvenience; on this sector it is a major problem.

CHAIR—If no-one else has an opening statement, we will go to questions. When you say that employees are terminated at the end of a specific period of time for a project, in what manner are they terminated?

Mr Lee—Typically what you would have is that somebody would be employed for a project. There are a whole heap of them around at the moment. I will take one as an example: the phase 5 gas plant up in the north-west. You would have a company up there doing the civil works, which is all the earthworks for that project. That particular bit of the contract may in fact be for six months, so they would employ a whole heap of earthworks people to do that for six months. They would be employed during that period and at the end of the contract they would be terminated. The agreements reflect this by having redundancy provisions and those sorts of things. They are terminated in accordance with their contract of employment. They are paid out all their entitlements—any leave that they have owing, redundancy payments—and then they finish up.

That same company may have another job somewhere else, in which case they might ask, 'Do you want another job over there?' If so, the people are re-engaged. That might be a matter of weeks or it might be a break of months. That is quite typical. The companies that we have here fall into that category. They would specialise in a particular aspect of the construction cycle and their work would be confined to probably a six-month or 12-month period on a project, even though the project might be going for two or three years.

CHAIR—Someone talked about employers wanting to employ people under the same set of arrangements. Can you describe how those arrangements are in place now? The obvious

difficulty I see is that, unless existing AWAs meet the new no disadvantage test that will apply to ITEAs, you are going to have two different sets of conditions to begin with.

Mr Lee—Maybe I will give a little snapshot of the nature of construction in WA at the moment. The no disadvantage test, whilst being an administrative hassle, does not really create a problem. At the moment the wages in the construction industry, because of the demand of rates, are far in excess of any award entitlement. So the no disadvantage test is not an issue that I or the members here need to worry about in terms of their AWAs or ITEAs meeting that test. You could not get people on the award at the moment. It bears no relevance to the marketplace at the moment.

CHAIR—So is it typical that people are employed under a common set of conditions in the industry?

Mr Lee—It varies. You might have a generic set of terms and conditions for a company, but what is quite normal is that each project has particular conditions. A remote project, for example, would have fly-in fly-out arrangements and R&R arrangements that a project close to Perth, which is on a more normal Monday to Friday type arrangement, would not contain. So, typically, projects would have certain provisions that are specific to them.

Mr Noonan—I will give you an example. When we bid on a project, we make an assumption about what we need to offer to attract the workforce we need to complete that project. So before we have even been awarded a contract we have made a judgement about what package we need to put on the table for employees, however that might be conveyed to them. If we win the job, that is what we would expect to go in. We have costed the job on that, so that cost is already an assumption in the company's process. Then the task is to have consistency so that when people compare pay slips at the end of the day or the end of the fortnight—which they do in the construction industry and the mining industry—they can expect that if they have worked the same hours they will see the same details on those pay slips. One of the concerns is that if we end up with an arrangement which is going to generate differences it will be an unsettling thing.

I will give you an example of the sorts of things we have been talking about. Before Christmas we had employees at the Boddington project under a collective agreement. Many of those employees have come up to start a job at Newman. They are currently on an AWA—that is the client's preference. The conditions change, the package changes and the roster changes between those two jobs in the form of the industrial instrument changes. As we go through this transition we want to try to manage it so that those changes are limited to what is on our particular project, for the duration of the project—not changes that come in during the course of a project. You need to understand that the turnover rate in WA, in a wages environment, is typically running at around 30 to 60 per cent during the project, as people vote with their feet to take up more lucrative offers. So there is a great deal of churn, even during the life of a project. It is not an issue that you start the job with a particular instrument, but, if the rules change part way through, that is going to have an impact on the people that you are continually hiring during the life of the project. As Daniel said, there is no question that anyone is going to get anywhere near an award rate or any other such thing. They will all be on terms and conditions that are well in excess of that.

CHAIR—Would the conditions within different jobs and projects all be identical?

Mr Noonan—They will vary from project to project.

CHAIR—I mean within a project.

Mr Noonan—For a given contractor they will be consistent, ideally.

CHAIR—Who are they negotiating with to come up with those terms and conditions?

Mr Noonan—As I said, the broad costings are determined by the company prior to bidding for the project.

CHAIR—From what you have described to me, if it is the client's preference that the project is done on AWAs then the employer or the client simply determines what they are prepared to pay and that becomes the basis of the AWA and everyone is on the same terms and conditions within that project.

Mr Noonan—If an AWA is the instrument, that would be the outcome.

CHAIR—So there are no negotiations between employees and the contractor in terms of the initial AWA?

Mr Ward—All of our employees are employed on an AWA, and that first consultation period took place over about 10 months back in 2000 with our existing workforce. There were very extensive negotiations. That expired in 2002 and we went through the same process again over about six or eight months to introduce a second AWA. That AWA forms the core conditions for our employees. We operate in the metropolitan areas of Perth doing subdivisional developments. Daniel alluded to the conditions. In this situation, the guys and girls are working in Perth typically from Monday to Friday and they generally get the base conditions. As a contractor, we then tender for work on construction projects anywhere within Australia. When we put in our price for the job, we have our core AWA but we get advice from the client if a particular construction agreement is applicable to that job. I say ditto to Tony's comments: if the job is in Fitzroy Crossing in 45 degree heat and with pretty average accommodation, we are going to have to bump up the rates. We approach this with the line that we are going to try and transfer some of our existing clients there, so we look at what sorts of inducements we need to do that. But, particularly if we are going to have to recruit a new workforce, we have to have an employment contract for the nature of that job to get people to leave their homes in Perth or leave our competitors and come and work for us.

CHAIR—But who do you negotiate with?

Mr Ward—We have negotiated the core with our existing employees. If we advertised for employment and you came in, we would have to sell our terms and conditions to the employee, or we do not get labour.

Mr Noonan—Essentially, it is a buyer's market at the moment.

CHAIR—What you have described to me is a collective agreement negotiation, then offered on an individual basis—is that right?

Mr Lee—If I could add some comments there. From an administrative point of view, a number of the companies have AWAs that are fairly similar in nature across the board.

Otherwise, from an administrative point of view, it becomes a nightmare to administer. I suppose the point of what we are getting at is the transitional issue.

CHAIR—That is where I am coming to. I understand the argument you are making about having different terms and conditions on the job. Again, depending on the test that is applied—and you say that it may be irrelevant in this state and it may well be in your industries—you may have been in a position where you actually have different employment conditions for people doing the same work.

Mr Ward—Yes.

CHAIR—And that is a concern to you?

Mr Ward—Yes.

CHAIR—And you do not support that?

Mr Ward—We are, for example, working at a place called Ravensthorpe on an open-cut mining project 600 kilometres south-east of Perth. There is one thing we forgot to point out when we said that we terminate employees. Employees also come and go as they please and in December—I think it was 27 December—one of our employees from that job got the Christmas bug and decided he had had enough of the bush work and left. We rehired him on Thursday of last week in the same job and with the same AWA and that was great, we thought, for all of us. We got one of our guys back who had already been down there, been inducted, competency assessed, trained, and the assurance that he has been there before, he has lived in the camp, he has done the hours and he is quite happy. He has made a decision now that he wants to go back out to the bush.

This proposal to not allow people who have previously been employed on a situation would have left us in a bit of a pickle given that we have got close to 50 employees there now on an existing AWA, yet we have a chap here that left us about six weeks ago. This is very common given the itinerant nature, I guess, of our industry and the pool of people that we and Tony recruit from. We compete against each other. But that would have left us in a bit of a pickle when faced with that situation.

CHAIR—What I do not understand is that you have described to me a collective agreement negotiation process—that is what you have done. You then offer it as an AWA on an individual basis. Now you have got the problem with ITEAs. Why do you not just do a collective agreement? I do not understand.

Mr Blyth—I wonder if I could add to the information that you have been provided this morning. At Compass Group, as I am sure you all appreciate from the outline that was provided to you, our core business is the catering and accommodation business and, in particular in Western Australia, we are the major provider of catering and accommodation services to the remote sector. We divide that sector into two broad groups. One we call the production group and the other, construction. It should be reasonably obvious that production is existing operating mine sites and we will be providing catering and accommodation services to those sites throughout Western Australia and to the construction sector, which is major mining, upgrades and construction projects. We will provide the workforce for the catering and accommodation sector there.

There is a stark difference between the terms and conditions that we provide in our construction sector of our workforce and what we provide in our production sector of our workforce. For more than a decade now, Compass Group has been using individual agreements as the dominant form of industrial instrument for its workforce. But it is not exclusively the case. Certainly, nationally, we provide quite a broad range and mix of industrial instruments depending on a range of factors. It might depend on the nature of the sector that we are working with: it might be the aged-care sector through our Medirest business; it might be our Scolarest business where we are providing services to TAFEs and universities; or it might be the business sector. We might be, across our business nationally, employing people under awards, under union collective agreements, under employee collective agreements or under AWAs.

I want to bring the focus back to Western Australia because it is a key area—although it has very strong similarities for us to Queensland, where we also have a fairly substantial involvement with the resource sector both in construction and in production. In Western Australia, for more than a decade the dominant form of industrial instrument has been individual agreements. Historically, they were initially state based individual agreements, and then, over a period of time, with their abolition from state law we moved to Australian workplace agreements. They have been a feature of our business for many years, except in a number of locations where, again for historical reasons, we have collective union agreements on some of our sites. Those tend to be sites where there is a residential workforce for us to draw from.

The balance of our employment arrangements in Western Australian remote business operate on what we call 'fly-in fly-out'—FIFO—operations, and I am sure that the senators are all familiar with those. At each one of those sites we have an AWA in operation. I can say quite openly that the core of those AWAs is identical, but the detail of the conditions regarding the actual rates for site A compared with site B compared with site C will vary, and they will vary for a number of different reasons. Some are commercial assessments which we made when we were in the tendering process. We had a frank discussion with our potential client and said, 'We think that these are the sorts of rates that we need to pay to attract people to that site.' Recently we have had substantial conversations with a significant client of ours about one of our core problems: turnover—I will come back to that in a moment. Turnover was identified by that major client as an issue for us on a number of sites where we provided services to them. They asked what we, Compass Group, could do about improving retention. One of the answers—and it is only one of the answers—is to improve rates of pay, provide bonus payments and so on. So we have shaped what was broadly the same AWA to now include some higher rates of pay and, potentially, some bonus payments.

I think the question that you are asking comes to this key point: what negotiation is there between the individual employee and the employer, given the nature of these so-called individual agreements? The frank answer is that predominately that happens at the point of recruitment. We sit down each week in Perth looking to recruit something like 50 people because of the size of our business and the turnover. As I think has been mentioned, turnover rates in WA remote sites can be in the order of between 30 per cent and 60 per cent. We are constantly recruiting people. We see a couple of hundred people a week to recruit perhaps

about 50 or 60. We have a frank discussion with them about the terms and conditions which we can offer them at site A, site B or site C, and the employee says, 'That's what I want. I'd love to go and work for you for that.'

Senator STERLE—It is collective on that site. You do not have 50 different employees with 50 different employment contracts on site A, do you?

Mr Blyth—Without question that is right. It results in uniform terms and conditions. The fundamental point that I want to make is that, in the best interests of our clients, at a particular site we seek to ensure that, to the extent that we can, there is no disharmony amongst employees—that is a point touched on by Tony—and that the rates of pay and terms and conditions at a particular site for the same people performing the same work in the same conditions are as close as practicable to the same. At the top end of our workforce, at the level of head chefs and chef managers, there is perhaps greater likelihood of a variance, whereas at the lower level of what we call 'utilities'—our kitchen hands, our cleaners, our gardeners and our bar staff—uniformly at a particular site they are likely to be being paid on the same terms and with the same conditions.

On the point that we now are concerned about in relation to the transition bill: we accept without equivocation that AWAs are on the way out. ITEAs are intended to be—and we understand this—nothing more than a transitional mechanism to enable companies such as ours to move from where we have been for the last decade or more to a system of collective agreements, whether they be union based collective agreements or employee based—

CHAIR—I am glad you finished on that point, because this is the difficulty I have: AWAs are going.

Mr Blyth—Absolutely, yes.

CHAIR—They are going. The transition bill is there, as you rightly point out, to assist in the transition. But the problem I have is that no-one has described anything here that is not the process of a collective agreement. To me, it begs the question: why are you worried about hanging on to AWAs for the maximum length of the transitional period and not simply moving to a collective agreement, because that is what you already do, except for offering it on an individual basis?

Mr Blyth—The difficulty is that this is not something that we can turn on and off overnight, and that is the key question for our business. This is a process that we understand from an analysis of our business is going to take us some time. It is one that we have embraced. We are now moving towards putting in place what is necessary to engage in a process of collective agreements, but it is not something we can do at over 600 sites around Australia that we have in total, with over 80 sites here in Western Australia which are on AWAs at the moment, and identifying this one small but significant part of the transition period—that is, employees who have left our business for all of the sorts of reasons that have been described, who want to come back to us and, while we are going through that transitional process, who will be at a disadvantage because they cannot be employed on AWAs.

CHAIR—I have to make this point again, Mr Blyth. I understand that argument, but you still do not do an individual negotiation under an ITEA. It is simply then a matter of you

determining that these are still the arrangements you need to put in place to attract people, and you still do it as: 'These are the conditions we are going to offer, and there it is.'

Mr Blyth—But, with respect, the key that I think you are missing is that, in relation to this transition period, if we were to employ someone who we had previously never employed then the arrangements that have been in place for the last decade would continue for the transition period. The problem for us—it is a relatively narrow problem in the context of moving from where we were to where we need to go—is that we have employees who leave our business and, within a period of weeks or perhaps 12 months, want to come back and work for our business, which from our perspective provides us with productive, efficient employees who know our business, but who cannot be employed on ITEAs. So it is not a question of the philosophical debate about the advantages of AWAs versus collective agreements; it is a recognition that, in a transitional period, there will be one group of employees important to our business from a productivity point of view who will be in a position such that, if they are employed by us, they cannot be employed on the same thing, being an ITEA, but have to be employed under an award. We then find that at a site where our clients obviously would want us to have in place registered industrial agreements for that workforce—and there are a whole range of obvious advantages to that—the ex-employee cannot be put into that category during this transition period. We think that is a flaw in the bill, with respect.

Senator MURRAY—On a point of order, Mr Chair: I gather you have had 40 minutes of questioning. How much time is the rest of the committee going to have?

CHAIR—I will be very fair, as you know, Senator Murray.

Senator MURRAY—So another 40 for the rest of us?

CHAIR—Yes, indeed.

Senator MURRAY—Good.

Senator FISHER—Chair, if I may ask: what is the plan? What does that mean? Does that mean that we extend the period for which CCIWA are before us, or are we going to ask them to come back? Can we discuss a plan?

CHAIR—No, we will continue on with the witnesses through the program. If we run into our breaks, that is what we will do to make up the time. I suggest that it has not been quite 40 minutes anyway, Senator Murray, but continue on.

Senator MURRAY—I was enjoying the interchange. I just wanted to make sure that we had our fair share.

CHAIR—Yes, and as you know I will ensure that you do.

Senator MURRAY—Excellent.

Senator WATSON—I have a problem centred around ITEAs. You mentioned that you went back to Labor Party policy last year and what was a given then. But, in relation to the consultation process, where Ms Gillard said she had consulted widely in relation to this issue: are there any differences in terms of outcome between what was outlined initially, what was promised you in the consultation process and what has been delivered at the present time?

Mr Noonan—From Macmahon's perspective, we understood the two-year transition to be a period in which we could manage a transition to collective agreements. That meant looking, on a project-by-project basis, at how we did that. I made the comment earlier that the one thing we do not want is to have, partway through a project, people employed under a different arrangement whilst that project goes on. So we will look at what work we have in front of us and at the right timing. There are commercial issues around it, because I have never yet known a workforce to vote up something for free. So there is a cost to be paid. Again, there are obvious times when we have to pay increases, and that is an obvious time to negotiate agreements, but we need the capacity to manage that over that two-year transition.

So my understanding of what was promised in the transitionary period was: we had this instrument available to us to enable us to make that transition over two years. I guess what we are saying is: there appears to be a flaw in the drafting of that which is going to make it very, very difficult for it to be a transition over two years. Then you add the turnover factor, which is this concept that you have a workforce on AWAs and they roll on for whatever time. That is great if none of your employees ever leave you. But in our industry, with a high turnover, that is almost inconsequential. If you do the basic maths around an average of, say, 40 per cent turnover in your workforce, it does not matter how long an AWA has got a life for. The two-year time frame is a time frame we thought we had to work with.

Senator WATSON—In respect of new employees, they go on to an AWA, but you would discriminate, effectively, against a person coming back—is that right?

Mr Noonan—Yes, that is right. Take our workforce at Ellendale, a diamond mine in the Kimberleys. There are 300-odd people there in December. When the wet season comes on, they cash in their entitlements and they terminate. We would normally rehire them in March, so they have a break, depending on the wet season. Two-thirds of that workforce will come back. One-third has been there. We will not have the opportunity to, in a reasonably orderly fashion, transition that site and that workforce to a collective agreement, because we will not be able to re-employ them on something that looks like a, if you like, pseudo-AWA, until there is an appropriate point where we can negotiate, where there is a commercial basis and a reasonable time frame to negotiate a collective agreement with that particular workforce.

Mr Ward—We are all moving towards developing collective agreements now that AWAs are on the way out. At Ertech, we have started a steering committee to put this in place. Ambitiously, we have set a date of August 2008. If we do it by then we will be delighted. So we have started, with our workforce, to put together a new collective agreement, but we are not ready to rehire that employee who came back to us on Thursday on that new agreement yet. As Tony said, the new agreement is going to have to have financial inducements. We could not take that employee back to Ravensthorpe on a different rate to that which the other 40 people there are on now. So we are moving towards a collective agreement. We want to have it in place by the end of this year. But we are seriously disadvantaged if we are precluded from rehiring our itinerant workforce as a result of that particular clause.

Senator WATSON—A lot of the academics and others who have studied this have looked at hourly rates under the various employment conditions. They say that overall generally the hourly rates under AWAs by and large are lower. Would it be better if these academics looked

at the total take-home pay rather than hourly rates, or do they build the total take-home pay into their hourly rates? That is not clear to me.

Mr Noonan—I think, coming from a company that uses a mixture of collective and individual agreements, the hourly rate is not a measure of earnings under either. We will package the remuneration depending on what we think is going to be the most attractive for the given location. So sometimes it will be loaded in terms of incentives; sometimes it is loaded in terms of payments to ensure they stay the duration; sometimes it is just loaded into the direct cash rate. That is a commercial marketing decision we take.

Senator WATSON—So hourly rates are not a good indicator?

Mr Lee—No. I negotiate a lot of construction agreements around the state—both union and nonunion. The reality is that, if your base hourly rate is around $30 an hour, your actual real hourly rate is closer to the order of $55 an hour because it is plus, plus, plus. It is $30-plus, plus, plus. As to the point about AWAs versus collective agreements, certainly in the construction industry in WA the reality is that the rates are the rates. People know what they need to get paid and what is available, and people vote very quickly with their feet.

Senator WATSON—You mean the total tax they pay?

Senator MURRAY—Just a clarification: you said $50 an hour is the actuality. Multiply that by the number of hours in a year and you are earning over $100,000. Why are you not on an individual agreement if you are over $100,000?

Mr Lee—What are the options further down the track? We are crystal ball gazing at the moment about potential opportunities further down the track for different styles of agreements. We have confined ourselves purely to the transitional aspects in making sure that current projects and current companies can transition in an orderly manner in terms of what sorts of industrial instruments come out at the end of the road, further down the track.

Senator MURRAY—But the government has essentially said that you can transition. If they earn over $100,000, you can give them exactly the same contract as they previously had, if you wish—or something different.

Mr Lee—The problem is that that is not in at the moment.

Ms Kuhne—Our understanding is that that will not happen until the full new system takes place, from January 2010. So the award modernisation process needs to occur. All of those processes will take place prior to the introduction of that system. There is some uncertainty about that in the bill, but our understanding is that substantive legislation will be introduced into the parliament later in the year to deal with that particular matter.

Senator WATSON—Does that need clarifying in the bill?

Ms Kuhne—It is certainly not clarified in the bill.

Senator WATSON—But it needs clarifying?

Ms Kuhne—It probably does need to be clarified.

Senator CORMANN—Moving away from the transitional arrangements for a moment, you mentioned in your submission that essentially the introduction of AWAs in Western Australia has assisted to improve levels of productivity. Can you expand on that a bit? Have

you got any data or economic analysis from over the years that can help substantiate that statement?

Ms Kuhne—It is certainly the case that the opportunity for business to offer the full range of choice of agreements to their workforce has meant stability in industrial relations. There is actually a graph that shows that industrial disputation in WA has been reduced to almost nothing. In fact, it really coincides with the commencement of Work Choices. No, it does not, actually. It coincides with the commencement of state workplace agreements back in 1993.

We argue that there is a correlation between the offering of individual agreements and stability in the workplace in terms of industrial disputation. We have had that stability, which has in itself, we would argue, assisted productivity because there have been so few working days lost. But there has also been the opportunity for employers to offer particular styles of agreement, as I think you have heard this morning, to suit the particular needs of the project and the workforce.

To add to what our members have said to you this morning, there are also agreements offered purely for niche market opportunities. So if you have a highly specialised position that you need to fill, the AWA has been the perfect vehicle for offering a particular set of circumstances. That happens in every industry and has been a great boon. It is really the suite of options, the full range of individual, collective, union and non-union agreements and award coverage that has led to a much more productive workforce.

Senator CORMANN—In an ideal world, moving forward, would there be a place for individual employment agreements from your point of view as part of the suite of options available?

Ms Kuhne—If there was some means of individual agreement making, we would be satisfied. It appears that the government is relying on award flexibility clauses that will be introduced as part of the government's new system. These flexibility clauses are supposedly designed to enable an employer and an employee to negotiate a set of arrangements that might suit them, but we do not know what they look like yet. We are curious to know how that system will work. If that does genuinely provide for individual circumstances, that will be an improvement on the current award system.

Senator FISHER—I would like to take you back to the terms of reference for the inquiry, which were essentially on the economic and social impacts of the bill. The bill clearly deals with agreements and agreement making. It deals with Australian workplace agreements and ITEAs, but it also deals with other things. It deals with a new safety net. It deals with an award modernisation process. It touches on, inevitably, a new set of National Employment Standards. I will come back to that in some of my questions.

I would like to get a bit more from you, adding on to what you said in response to Senator Cormann's questions, particularly about a stream of individual statutory agreements. I would like to get from you a bit more about the starting point of today, and that is the economic impact, if you like, of a previous workplace relations regime. You may want to go back 15 years to when you started individual agreements in Western Australia, however they were packaged. You may want to go back 15 years, but what do you see as the impact on jobs, productivity and wages in Western Australia of a previous workplace relations regime? Then I

would like to take you to more detailed questions about how you see that playing out under the bill. Can you please answer the general question first.

Ms Kuhne—The arrangements that are set out in the bill and that we are working towards in terms of moving away from the individual agreement-making stream simply take away one of the tiers that is currently available. The result is that both employers and employees will be affected because many employees also elect to be employed under individual arrangements under their own agreements. It suits many employees.

We will have to dismantle that whole system, and employers and all businesses will need to refashion their businesses and recost the agreements that they have developed and enter into negotiations that will take considerable time in terms of transitioning away from their individual agreement making stream into collective agreement making and into collective agreements. It takes a considerable period of time because you have far more people to negotiate with and far more issues to take into account as you transition into that system. So the time frame will relate to loss of productivity. I do not have with me any statistical information or data that shows what the benefits have been over those 15 years, although there is—

Senator FISHER—Somebody has already talked about industrial disputes being at an all-time low, for example. I presume back at HQ you have got some analysis that you will have done.

Ms Kuhne—We have done some analysis. We have not brought that with us today.

CHAIR—Are you able to provide that for the committee?

Mr Kuhne—We are able to provide some of that information. I do not think we have done any work that directly compares the success of the individual agreement making stream against productivity. We have not done that direct work.

Senator FISHER—My question is more about the workplace relations environment in general of which individual agreement making is a part. You have said: it is about choice. Individual agreements do not suit everybody but they are there as a choice. So my question to the chamber is: what is your assessment of the workplace relations system overall for the past 10, 15 years, wherever you want to go—I would not go any further than 15—and use that as a base against which you then assess where you think the transitional build will take Western Australian industry in particular? What do you have prior to today?

Mr Lee—I will give an example of the typical construction process, typical project process, going back a few years. When you commence a project you do not have any employees, so the concept of having a negotiation with a collective group of employees does not work because you do not have any. Going back a number of years, the typical process was: you would commence a project without an agreement. Unions were reluctant to do greenfields agreements because they would do an agreement and then get hammered by their members into who got recruited. They did not have input into the process. You would commence a project on a guesstimate of what you needed to pay people to attract them to a project. Then you would have a series of disputations on the project whilst you were negotiating agreements for the project, and a typical project would lose something like four per cent of total time to disputation. A lot of that was negotiating the agreement, so you would

get the agreements negotiated halfway through the project. During that time, the earthworks companies would have started, finished and gone, so they would not have been on the eventual agreement to start with. You would go through that process and have a series of strikes and reach an agreement of what the rates were for that particular project. You would be on a project agreement for the balance of the project and have something in the order of four per cent of lost time. We have had a number of projects going through at the moment where there is no lost time.

Senator FISHER—So that has changed over the past 10 or 15 years—

Mr Lee—Significantly—

Senator FISHER—is that what you are saying?

Mr Lee—Yes.

Senator FISHER—For the better—I presume.

Mr Lee—You are not losing time, and, believe me, the rates have not gone down.

Senator CORMANN—What I hear you saying is: industrial disputations are low, productivity is higher, wages are higher and employment is high. What problems from your point of view is the government actually trying to fix in your businesses? What do you think the government is going to add in terms of improving further the strength of the Western Australian economy?

Ms Kuhne—As you know the, WA economy is booming like at almost no other time in the past. There is almost nothing that can be done to improve the economy further.

Senator CORMANN—I thought that you were going to say it was IR reform.

Ms Kuhne—In terms of IR reform, that is right. We have argued in our submission—and we have not gone to all of the argument—that Work Choices and the workplace relations act have delivered significant reforms in terms of all of those areas—

Senator CORMANN—And contributed to economic growth.

Ms Kuhne—and contributed to economic growth—in the sense that job security is very high, unemployment is very low and, as we have mentioned, industrial disputation is at an all time low. So clearly we would say—

Senator STERLE—There is a mining boom on, isn't there. Let us not confuse it with how wonderful your past IR laws were. Let us cut to the chase and say these things.

Ms Kuhne—That is absolutely right. There is certainly a boom, but I guess the point that needs to be made is that the system is working well in that context. We would certainly argue that there is not a need to change. However, we recognise that the change is happening. We recognise that the government has introduced those changes and is about to abolish AWAs. What we say is that we expect the government to be fair and to live up to its promises of a transition period. It has said AWAs are gone. Okay, we accept that, but we need the full transition period to work into the new system—to develop the collective agreement process that our members, and Daniel, have talked about.

Senator FISHER—West Australians would say, 'Thanks very much. Leave us alone and thank goodness for the Nullarbor.' But we have a federal Labor government that, as you have said, is taking things elsewhere. Let us go further, then, to some detail about the bill and the impact of the bill on productivity, the impact of the bill on strikes, the impact of the bill on wages and the impact of the bill on employment. Your submission has gone in part to some detail there. For example, you make a general comment in the beginning that it 'will have a significant impact on productivity and may create potential for increased industrial disputation.' That is a core part of what this inquiry is about. Can you give us some more information, starting where you wish, on industrial disputes?

Ms Kuhne—In the transition away from AWAs into collective agreement making you immediately have the potential for industrial disputation because you are changing instruments—you are entering into a negotiation process where the ground rules will change. There is a period of negotiation and settlement and we simply say that there is potentially industrial disputation that may result out of that.

Senator FISHER—Do you think the bill provides a mechanism for a strategy to manage a union movement that is talking about not showing any wage restraint? In the construction industry you enjoy a robust relationship, I am sure, with Kevin Reynolds, who is on the record about wage restraint. Do you see this bill providing any sort of mechanism for the development of a strategy to contain those disputes?

Mr Lee—The bill does not concern itself with issues of industrial action and protected action, as I understand it.

Senator WORTLEY—Can we deal with the transition bill rather than with issues that may relate to the substantive bill, because what we are doing is going between the two.

CHAIR—As far as I am concerned, senators can use their time to ask questions that are relevant to the general issue before us, and I think the questions are in order in the general terms of the terms of reference. But contrary to an early assertion about the amount of time I have, the secretary advises me that I only have 30 minutes. We are now very close to 25 minutes for opposition questions and I want to go to Senator Murray as well. So if you could wrap up very quickly.

Senator FISHER—Thank you, but I asked about a plan at the outset so that we could plan depending on what your plan was. I appreciate the news that we have half an hour.

CHAIR—People can watch the clock as much as they like. My plan is to try and give all the parties on the committee genuinely equal time. If we want to get a stopwatch, I will have the secretary go and buy one during the break and we will do it to the second. So if you could wind up very quickly.

Senator CORMANN—Yes, very quickly. Mr Lee just said that this bill does not concern itself with managing relations with unions. Isn't it fair to say that the existence of individual agreements as an option, even for construction workforces that are fully unionised, provided some leverage and some capacity to negotiate in an environment where unions had an eye on that as an alternative option? Might that not somehow change their behaviour in that negotiation? Wouldn't you be concerned that the disappearance of individual agreements over the long term is going to take that away from you?

Senator FISHER—Indeed, you refer in your submission—

CHAIR—The question has been asked.

Mr Lee—Certainly. The reality is that a company always had an option in terms of starting a project, and it had a suite of industrial instruments to choose from. One of those options is obviously coming off the table.

Senator CORMANN—And that will reduce your leverage.

Mr Lee—The reality is that that reduces our options in terms of certainty. When you are making a multibillion-dollar decision about whether to build a piece of equipment it is about certainty. Certainty is worth a lot of money. That is, in some cases, the difference between going ahead with the project and not going ahead with the project. There is a range of factors, including the price of iron ore and God knows what else.

Senator MURRAY—I would like to put my questions in context. My policy position is as follows, so you understand where I want to go. I and my party are responsible for there having been pre-Work Choices AWAs—they would not have occurred without us. Secondly, I am personally responsible for the introduction of the no disadvantage test. Thirdly, my party and I are utterly opposed to Work Choices AWAs—the sooner they are gone the better. Fourthly, we remain attached to individual statutory agreements. The point is that the government has agreed that there will be common-law agreements—it supports common-law agreements which are individual agreements. With respect to just the construction and resources industry, where we know that many and perhaps even most employees today earn over $100,000 income or near that, why will you not just switch to common-law agreements if individual statutory agreements are done away with?

Mr Lee—There are two bits to the answer. At the moment, once you are entered into a legislative agreement then people cannot take protective action. So there is certainty for all parties because there is an agreement for a period of time, these are the rights and conditions, and protected action cannot take place. People cannot take strike action to get more money and the like. So there is certainty for a project. As I understand it, but it is unclear at this stage, there has always been that ability to do common-law contracts over and above awards and the like; the problem is that they do not provide certainty in terms of protected action.

Senator MURRAY—I am of the view that individual statutory agreements provide the employee with much more protection than common-law agreements, which is why I support them from an employee protection point of view. Your answer has just indicated that they also provide more protection for the employer.

Mr Lee—That is correct.

Senator MURRAY—Therefore, why would it make sense for common-law agreements, which put the employee at more risk, to be supported by this government rather than individual statutory agreements? What is your perspective on that?

Mr Lee—From my perspective it is individual statutory agreements. I have heard stories about the $100,000, and I think the previous one was $75,000—

Senator MURRAY—It is not a story; it is in the legislation.

Mr Lee—In terms of the cut-off point for the construction industry in WA, the no disadvantage test, other than it being an administrative hassle in terms of the lodgement process, has never been an issue in trying to undercut award conditions. It is just not an issue. It is about making sure that whatever system you have in place provides certainty to the employer and the employee, is robust in terms of enforcement and that it holds up, and it is administratively simple to arrive at. I negotiate lots of agreements with lots of unions. The process is long and drawn out; you are talking about an extreme period of time.

Mr Ward—The $100,000 figure is not something that our employees in the metropolitan area would achieve, yet these are the same common pool. An excavator operator digging a trench in north Perth would not gross $100,000 whereas one down in Ravensthorpe or somewhere else might. But, even then, if you think of the nature of the construction industry, not many guys think, come January, that they are going to work 52 weeks of the year and are guaranteed they are going to get $100,000 or exceed it. Some do, but it is itinerant in nature. They might quit in June and take two months off to reduce their taxation income and come back and choose to work again in September, or the project might be of six months duration.

Senator MURRAY—You have picked on an interesting point, and it is one I wanted to explore in this interchange. The $100,000 is obviously arbitrary. Any figure is arbitrary, but you wonder how it is selected. For instance, $80,000 is the tax threshold rate for the 40 per cent marginal tax rate—in other words, that is the level at which governments have determined that people shift from lower and middle incomes to higher incomes. I have not seen any submissions—and maybe I have missed them—whereby employer organisations or companies have addressed the issue of where the cut-off point should be. I have a prejudice towards lower income people in that I think they are better off on collective agreements. I think they are better off with the backing and support of unions. I have less prejudice once people get into higher income areas. Why are you not contesting the $100,000 figure, given what you have just said about where people's salaries actually are in metropolitan areas?

Mr Ward—Do you mean contesting that that is too high and should be lower?

Senator MURRAY—Yes. It is arbitrary. Why has $100,000 been chosen?

Mr Blyth—If I could try to answer that question, but I expect I will not do so as directly as you might hope. The industrial relations system is, as I am sure you appreciate, peppered with all sorts of arbitrary limits, whether it be the new $100,000 that is being talked about in the proposed substantive legislation where employees can in effect do common-law contracts, the limit for someone having access to the unfair dismissal system or the limit under the current regime for the application of the fairness test. There is a mishmash of what, from an employer's perspective, are seen to be arbitrary decisions, which presumably have—and we say this quite respectfully—some political motivation in their determination. It would certainly be a significant improvement on the current system if there were more uniformity in those thresholds where people are able to access different aspects of an industrial relations system.

Senator MURRAY—Can I put this to you. This is obviously coming off the top of your head. I do not mean that disrespectfully, but it is obviously something that you have not all discussed or thought about. Could I ask you either individually or through the chamber to

come back to the committee with a view as to thresholds and where what you describe as a mishmash may be ineffectual, unproductive or unhelpful and whether it could rationalised in any way. We try to do that all the time. For instance, the category for small business is either the ABS level of 20 employees or below or the industrial instrument measure of 15 employees or below. Those are well established over time. Could I ask you, on notice, to think about it and give us a supplementary view on that.

Ms Kuhne—Yes.

CHAIR—Thank you, witnesses, for your submissions and for your appearances today.

Senator FISHER—Mr Chair, I have a question: given the lack of a timetable this afternoon, could we ask the peak employer organisation in Western Australia whether they are able to afford us the opportunity to ask them further questions in this forum as part of the continuation of the committee's hearings, this afternoon, given that we currently proposed to adjourn at 12.45?

Senator STERLE—I have arrangements this afternoon already booked in my diary, so I cannot be here. I do not think we would have a quorum.

Senator FISHER—I understood that the secretary—

CHAIR—This is not a matter for these witnesses.

Senator FISHER—I agree.

CHAIR—Thank you.

Senator FISHER—But we may want to ask them to come back.

CHAIR—No.

Senator STERLE—I will not be here.

CHAIR—We are not setting out an agenda on the run during the middle of a public hearing. Thank you, witnesses. We will have a private meeting during the first scheduled break rather than take up any more time.

[10.11 am]

DEVEREUX, Ms Linda, Executive Manager Human Resources, Austal Ships

ROTHWELL, Mr John, Executive Chairman, Austal Ships

CHAIR—I welcome our next witnesses, who are from Austal Ships. I would invite you to make an opening statement to the committee and we will follow that up with questions.

Mr Rothwell—Thank you. First up, I would like this committee to be very conscious of the fact that I am the executive chairman of the company and run the business, so our evidence here today and our submission is far more about the global issues. Linda is the HR manager, but in relation to IR issues we rely on external legal advice.

I do not need to go into a sales job on what our company does, but let me just summarise it by saying that we build high-speed aluminium ships. We are probably the largest for that in the world and we employ about 1,400 or 1,500 people in Australia in this region. We have a shipyard in the US, which we will not talk about. We have grown that business over a period of 20 years and it has been very successful. It has been largely successful on the back of the performance of our people, the way we have employed them, their productivity, their innovativeness and industrial peace. It appears totally inevitable that the AWAs are going to go, so the only way that we can hopefully add some value to our business and to others is simply to say that, if it is going to change, let us talk about the features of AWAs that are important to us and somehow try to incorporate those in whatever will replace them. That is my opening statement. I will not be good at details; Linda will have some knowledge. We do not understand industrial laws in great detail, but we do know what works.

CHAIR—We will test you as best we can, Mr Rothwell.

Senator WATSON—In the executive summary that we were given, the federal government argued, in introducing the Work Choices reforms, that they would encourage increased wages. If you are paying at the top of the range to get high productivity and good innovation, what impact will that statement have on you?

Mr Rothwell—Salaries and wages are market driven at the moment, as you well know. For starters, companies like ours do a massive amount of training. I am not here to talk about training, but we have well in excess of 200 apprentices at all times. We train them at a time of skill shortage, particularly as it relates to contractors for the resource industry. They get poached. So our wages are market driven and we do need to pay market rates. In addition to that, we cannot match some of the resource sector salaries, but there are other ways of trying to encourage people to stay with you, so we work very hard at that. As for the suggestion that changes would incur increases in salaries, I think the market will always drive that. I think there is a minimum threshold as to what must be paid and certainly for the foreseeable future, the period that I am interested in, I cannot imagine that wages are not going to be ruled by the market.

Senator WATSON—Your reason for coming here today is that the transition arrangements are not satisfactory to you? You are coming here to see us today but, if it is going to be market

driven, there probably will not be a lot of change if you are going to be involved in the market.

Mr Rothwell—There are a couple of things. You would have noted in my opening address that we have experienced industrial peace. Austal had a very bad experience in our early period, with very thuggish type behaviour by the unions. I am not here to talk about that—it is history now. But we do have a good relationship with the workforce. We have a workforce that is productive, but we have a culture that allows us to work well with the workers and we are not controlled by any outside forces. No union disruption anywhere else in Australia will affect Austal, because we are a non-union yard at the moment.

Our main concern is that we have AWAs. We have in the region of 1,200 people on AWAs. They work particularly well for us. We have changes—EBAs, or ECAs, as we understand it. I am not even sure if our legal people understand the exact detail of those changes. But the concern we would have is that, if we are going to change from AWAs to something else, there will be more costs involved. I think this Senate may, if there are changes—and they appear inevitable—ensure that those changes are made as simply as they possibly can and with as little disruption as possible.

In our case, we have a workers representative committee. The workers select that group—a group about this size, I guess. We communicate any changes with them and it is a fairly democratic system, quite frankly. It works well. So don't force us to negotiate with unions. Allow us to continue to negotiate with our workforce, collective as it may be, through the workplace committee. Ultimately, I think they are probably the key issues. There is no opportunity for shipbuilders that employ 1,400, 1,500 or 1,200 blue-collar type guys to reduce their rates. You simply have enough trouble keeping them with above market rates. Allow us the freedom to continue to negotiate with our workers, directly rather than through unions. That is our greatest concern, quite frankly, and I would be surprised if anyone else in Western Australia, if they were honest, did not have that as their greatest fear.

Senator WATSON—So you think you will lose some of your ability to negotiate directly with your team of people who represent the employees collectively and open the door to third-party involvement in your workforce outcomes?

Mr Rothwell—I guess that is a summary of it, yes. We would like to have the ability to negotiate directly with our collective workforce.

Senator WATSON—Do you think you will lose that, though? That is the question.

Mr Rothwell—I am unsure, and I am unsure what the EBAs would do. I am a little unsure what would happen, for instance, if we have a change to the right of entry rules that we currently have. Our experience last time around when such rights existed was—fortunately for us and badly so for the union movement that tried to have access to those rights—that the person they had was not a very personable sort of fellow and none of the workers liked him, so he got rejected fairly well. But we were worried about disruptiveness. We have a good safety record in the yard—an excellent safety record, as industry goes. We are probably in about the 50 percentile of accident rates. But, again, the last time around there will always be an ability to drive a wedge in that tranquillity by unions coming in to say 'it is all wrong' and so forth. We found them very disruptive last time and we fear that reoccurring.

Senator CORMANN—You mentioned in passing that there was some history that you did not particularly want to touch on. May I ask you to paint us a picture of the situation for your business before individual workplace agreements were introduced and after. Obviously there were some issues in your business that government initiatives at the time helped you address. I am trying to understand how this current legislation is going to improve things for your business. Could you paint us a picture of how things were before and after individual workplace agreements in your business?

Mr Rothwell—That is not all that easy to do because we were never a union yard. When I started Austal in 1988, we had 30 people employed. We grew that business on the back of a small business culture and attitude. That then grew into something that was of interest to the unions. They came knocking on our door and tried a few tactics. I will touch on those if you wish.

Senator CORMANN—Yes please.

Mr Rothwell—We then immediately sought a way of avoiding that. At that time there was a way of having state AWA—

Senator CORMANN—What sorts of tactics were they?

Mr Rothwell—First up was the safety issue. Unfortunately at that time we did not screen a couple of guys. They came in with the Department of Safety and Health, DOSH, as it may have been called, or WorkSafe as it is called today. They came in and pointed out to WorkSafe that they had not been doing their job, because they found several areas that were unsafe. We are going back some years; I want you to remember that—by 'some years', I mean probably 10 or so. They came back in and then told DOSH that they were not doing their job and safety issues were huge. They found some errors: some scaffolding was not quite right and there were at that time occasionally some people that did not wear their helmets as they should have—some stuff happens. Anyhow, we fixed all that, but the next tactic was them saying, 'We want to come back again.' I said: 'There is no need. DOSH were doing their job. You have told DOSH how they should be doing their work. There is no need for you guys to come back. You tell them what they need to do.' Of course they said, 'If you don't allow us in, we will get the newspapers down here.' And the next day's headlines were 'Third World work practices at Austal' and so forth.

Senator CORMANN—Were they?

Mr Rothwell—Absolutely not, no. Definitely not. So nothing changed in the way we approached our safety.

Senator CORMANN—So how did individual workplace agreements assist you in building your business?

CHAIR—I just want to put this for you to think about. I am not going to try and restrict you, but going down this path, which really is not relevant to the bill, puts us in a position where others who may have a different point of view to what is being expressed may want to be in a position to give that other point of view. I am not sure whether that is going to be productive for this particular inquiry. I ask you to consider that before we go too far down this track.

Senator WATSON—On a point of order: the terms of reference are wider than just an examination of the bill; they go to the consequences of the bill.

CHAIR—I am not going to try and restrict the senator. I think this is a fair way away from where we are, but he is free to ask those questions. I was just making the point that we are asking one party to a dispute to give their version and ultimately that may lead us into a position where we have another party give a different version. I am not sure whether that is going to be very constructive for this particular inquiry. I was simply asking the senator to keep that in mind if he was going to continue on these questions.

Senator CORMANN—Mr Chair, this bill proposes to abolish the capacity of employers and employees to negotiate directly without the involvement of unions. I am trying to understand the circumstance as it existed prior to individual workplace agreements and since individual workplace agreements.

Senator WORTLEY—The bill does not do that at all.

CHAIR—The bill does not do that at all but, nonetheless, please continue with your questions.

Mr Rothwell—I was not particularly interested in flagging the details of that union propaganda. It was grubby and it is behind us now. Senator Cormann, you are asking what the difference is between how we were prior to workplace agreements and the way we are today. I guess there is no real transition because we came from a non-union background and we still have a non-union yard. Out of 1,400 people it would be very hard for you to find dissatisfied people at Austal—they like it; they like the way we work and the things we do for them. Our only reason for turning up here is simply to try to make this committee aware that in a company like Austal we would have to deal with a number of unions. Of course there are people who are highly credible and ethical and there are also those who are far from that. We prefer to do that directly with our workers through a workplace committee.

Senator SIEWERT—I would like to go specifically to the issue that was raised a bit earlier—that is, some of the industry groups have put forward the proposition that ITEAs do not apply to former employees. I am just wondering whether you have looked into that and whether you have any comments on that provision. The Chamber of Commerce and Industry WA just raised that issue and it has been raised in other submissions. If that has come up for you as an issue, how many employees do you think it would potentially apply to?

Ms Devereux—Do you mean future ITEAs?

Senator SIEWERT—ITEAs are not to apply to former employees and that has been raised with us by employer groups. It was raised earlier and I am wondering whether you have any comments on that. I know that some senators are looking at the other provisions, but I am interested in whether there are any unintended consequences with this particular bill and, if there are, do they need to be amended. That is an issue that has been raised by employers, so I am asking you whether that is your opinion as well.

Ms Devereux—It is my understanding that current employees whose AWAs have expired—

Senator SIEWERT—It does not apply to former employees.

Senator STERLE—It is in relation to seasonal employees, Senator Siewert. The construction and mining industries have seasonal workers that come and go.

Mr Rothwell—We do not have that.

Ms Devereux—It is not an issue for us.

Senator SIEWERT—You do not have people who are coming and going, so it is not an issue for you.

Ms Devereux—No, all our employees are permanent.

Senator SIEWERT—As I said, I am interested in this specific bill. Is there anything else in this specific bill—other than what you have just said—that you think needs to be fixed?

Mr Rothwell—I do not understand the bill in its detail so I cannot give you an honest answer. Looking at it globally, we have AWAs that work and we understand they are going to go. Then we have an intermediate arrangement that is going to last for a certain period of time and then we are going to go into a final arrangement. All of those are changes. All of those changes cost money, time, explanation and communication and it is quite extensive. We will be looking at whatever our options are and they may well be through an enterprise bargaining agreement or it may well be through an ECA. We are hoping to flick straight from one to the other, rather than into an intermediate one.

Senator SIEWERT—So you in fact do not like the intermediate approach—is that what you are saying?

Ms Devereux—I think we need to have it. Somebody before said that transitional period is very important to us if we are forced to go away from AWAs.

Senator SIEWERT—I accept that you do not like getting rid of AWAs, but the point is that is where we are going. I want to know whether this transitional bill meets the requirements. Is anything massively wrong with it that should be changed in order to get to where we are going?

Ms Devereux—The only area that I am not really clear on is those employees whose AWAs have expired already. We can put new people coming on board on ITEAs until the end of 2009, but the people whose AWAs have expired are the ones where there is a little bit of uncertainty for us, and we have not had really clear legal advice on how we go with those people. For us, it would be nice to have those people go onto the same terms as the ITEAs, which are that they expire at the end of 2009, which gives us a bit of time to look at everybody in the same boat rather than just a small group. Every day, that group is just going to grow and grow as the AWAs expire, so it is going to be a difficulty.

Senator SIEWERT—How many people do you have in that position?

Ms Devereux—That have expired AWAs? As of the end of February, we had about 180 to 200 people.

Senator STERLE—Mr Rothwell, I just wanted to clarify something. There is a lot of misinformation being spread out there. Labor's policy is very, very clear. We went to the last election with it, and we will continue with it in Forward with Fairness. If you have for many years been a successful business and ran a family type business with some 1,200 employees

on AWAs, would it be fair for me to say that you have a very good working relationship with your crew?

Mr Rothwell—We certainly do.

Senator STERLE—All the fear campaigns in the world should not change that one little bit. You should still have that ability to negotiate directly. It is clearly in the legislation, whether it be union or nonunion. I just want to make a statement more than ask a question. I feel a bit embarrassed for the employees when I hear opposition senators running out fear campaigns that 'the union is going to be crawling all over you'. They have not crawled all over you in the last 10 years. You have had successful relationships with your employees. Why should that change?

Mr Rothwell—As it stands at the moment, I do not think they have the same right of entry, do they?

Senator STERLE—Nothing is going to change there.

Mr Rothwell—Nothing will change there, so they will not have right of entry post that?

Senator STERLE—The Deputy Prime Minister has made very clear, as part of Forward with Fairness and the transitional bill, that the right of entry will not change. It is all in the legislation.

Senator MURRAY—That is right.

Mr Rothwell—That is music, frankly—because that can be very disruptive.

Senator STERLE—What I am trying to lead to, Mr Rothwell, is that there is no reason why things should change. Rather than it being called an AWA, it will be called a collective non-union agreement. So I cannot see, for those employers who have that relationship with their employees, where the fear would come.

Mr Rothwell—I do not want to ask a ridiculous and political question, but, if nothing is going to change, why are you changing it?

Senator CORMANN—It is a very good question.

Senator STERLE—I would like to answer that. It is because maybe, Mr Rothwell, in industries that are not well paid above the award conditions, there has to be some fairness. That is why that needs to change.

Mr Rothwell—I certainly appreciate that. Again, I repeat that I am not qualified to talk about the detail, but if there is a way to abuse the poorly paid and so forth—and I do not know the details thereof—then that clearly is not acceptable and that needs some changing.

Senator MURRAY—I have two questions. The first one is very quick. This is an unusual employment market, Mr Rothwell. What is your labour turnover at the moment?

Mr Rothwell—It is somewhere between 20 and 25 per cent per annum. I think that is the answer.

Senator MURRAY—Would you agree that in this environment that confirms a satisfied workforce, because of course the opportunities for movement are very high?

Mr Rothwell—Absolutely. We are quite pleased with that. It is hard to get it much below that.

Senator MURRAY—I do not know if you were in the room when the question of common-law agreements was discussed. Have those who advise you in these matters discussed the potential not only for non-union collective agreements or union collective agreements but also for common-law individual agreements?

Mr Rothwell—The only way to answer that is that, yes, it has been flagged with me that common-law agreements may well be an answer, except that our legal advisers still say that there are particular details of the common-law agreements that will make it more difficult for us, but I cannot tell you what those details are.

Senator MURRAY—So, in conclusion, what you need as a company is more clarification from the government as to how common-law individual agreements will be structured, when they apply and to whom they apply. Is that right?

Mr Rothwell—That is right.

CHAIR—Thank you for coming and appearing before the committee today.

Proceedings suspended from 10.34 am to 10.46 am

EDWARDS, Mr Neal, Consultant, BGC Contracting Pty Ltd

THORP, Ms Sandra, Human Resources Adviser, BGC Contracting Pty Ltd

CHAIR—I welcome the witnesses from BGC Pty Ltd. Thank you for your submission. Would either of you like to make an opening statement?

Ms Thorp—Thank you for the opportunity to appear before this particular committee. BGC Contracting is part of the BGC Australia group. In reviewing the bill we have addressed one main issue in the report that we sent through to you, and that is in relation to section 326, which talks about the making of ITEAs, and in particular the subsection that relates to the inability, as we see it, under the proposed bill to offer them to existing employees—in other words, employees who have been part of, say, BGC Contracting and who might have left and have now come back. That creates a number of difficulties for us. We obviously looked at the transitional period as being a transitional period which would allow us, over a period of time, to consider our particular options. Having this what I call 'thorn in the side' means that if we want to employ employees who have been with us before, which logic would say is obviously a preference if they are suitable, we either do not employ them or we have to very quickly put in place alternatives to ITEAs. Our preference obviously is to utilise the ITEAs during the transitional period while we carefully consider what our options are for the future, come the end of 2009. For this reason we seek an amendment in relation to that particular aspect.

CHAIR—I guess that main issue that you refer to is something that has been common so far. I am not clear whether this is a direct policy intention or whether it is an unintended consequence. But it is obviously something that the committee will be turning its mind to in its report. Thank you for your submission—I like one-page submissions.

Ms Thorp—I cannot take credit for that. Our CEO is very much, 'If it can't fit on an A4 page then it is not worth it.'

CHAIR—I warm to him, let me tell you. I think you made a number of points very well in that one page. One of the dot points that you have in your submission is 'that everyone is employed on equal terms and conditions'. Is that important to you?

Ms Thorp—Absolutely. We have, obviously, a number of existing contracts. We are in the contracting business, and we have tendered on the basis of certain cost prices and certain arrangements, particularly—for example—in working hours. It is important to be able to have people come on board who are on par and have equality with the other employees—certainly as a matter of equity and certainly as a matter of contractual obligation as well.

CHAIR—How did you initially negotiate your AWA?

Ms Thorp—We have a number of AWAs. We have AWAs for particular sites. I have been at BGC for approximately a year, so essentially a number of those AWAs have already been up and running.

CHAIR—Within each site or project would the AWAs all be the same?

Ms Thorp—Not necessarily. There are similar conditions—for example, a lot of our AWAs have standard clauses to do with annual leave and sick leave—but not necessarily so.

Depending on the project that we are involved in, they would not necessarily all be a standard template document, if I can use that term, on which you would simply change the title. Whenever we are tendering for a particular project, the project manager will generally come down and say, 'These are potentially some of our issues.' For example, we have got some projects up north where there are some issues to do with wet weather, so we need to, essentially, put something in there that caters for the issues of wet weather, cyclones and such, whereas another project may not have those particular issues that we need to deal with.

CHAIR—So that would be negotiated between the project manager and you.

Ms Thorp—That is exactly right. We then make them, basically, a condition of employment when an employee starts.

CHAIR—Is there any negotiation with employees?

Ms Thorp—Generally, since my time there started, no. They are basically established and then they are offered. For example, a salaried person would go along and say, 'Here is your letter of offer.' Generally we do not tend to have individual AWAs that are amended to reflect individual circumstances, because we want to have generally similar conditions across the board. For example, someone would not come along and say, 'I want more personal leave,' so that we would specifically give them a greater amount of personal leave. That is generally not what occurs.

CHAIR—I just have one last question. It is about the ITEA issue. I understand the point you make about ex-employees. What you have described to me is really not individual negotiation but a situation where you say, 'Here's a position,' and it becomes more of a collective type even though there is no negotiation at all—so that would have to be introduced. But then that same agreement would apply project by project, negotiated differently for different projects. What is the time frame difficulty that you have moving straight to that—because ultimately that is where we are going to end up; the transition bill is about transiting to a position where there are no AWAs, which leaves you a collective form of agreement? What is the problem? Do you need all that time?

Ms Thorp—Yes.

CHAIR—Why do you? Why can't you move quickly to a certified agreement?

Ms Thorp—Because we have a number of different sites that all have various different agreements. The issues that we have are in terms of which way we move, because we have a number of options in terms of, potentially, common-law contracts which sit in conjunction with awards. We obviously have the option of going collective. One of the issues with a short time frame is that we would have to have collective agreements for various sites. We have to consider the logistics of, first of all, establishing whether people could vote, and of the fact that we have people who do two-in-one rosters, in actually being able to get them all in one place to vote and having agreements for those specific sites—because we still have contractual obligations for those particular sites that we want to see out. As we move forward and new projects come on board, there is a fresh approach that we can potentially take with those.

CHAIR—Will the time frame allowed in the bill generally be enough?

Ms Thorp—As it stands, certainly. Until the end of 2009—we certainly do not have an issue with that, no.

Senator SIEWERT—You think it affects 10 per cent of your current employees, so that is around 140 a year. Is that right?

Ms Thorp—Yes, that is correct.

Senator SIEWERT—So there are 140 people each year?

Ms Thorp—On average. Basically I very quickly went through our current list of employees and said, 'Who's worked with us before?' Going through those records you can see some people three or four times. This might be their fifth time around with us. But out of the total number there were about 10 per cent whom I could identify who had been with us before.

Senator WORTLEY—I just want some clarification. When you talk about projects, is that site by site? So you have a project at a particular site and the people at that site would be on an AWA that covers that site, and the people at another project at another site would be on an AWA that covers just that site?

Ms Thorp—That is correct.

Senator MURRAY—Ms Thorp, you spoke about salaried employees and making a letter of offer. As you know, an AWA is a registered statutory agreement.

Ms Thorp—Yes.

Senator MURRAY—I would expect that many, or some, of your salaried employees would be subject to common-law agreements; in other words, they would not be on an AWA—

Ms Thorp—That is correct. All our salaried employees who do not have an award as their basis are on common-law contracts.

Senator MURRAY—All your salaried employees who do not have an award. What proportion of your salaried employees would that be?

Ms Thorp—We have approximately 400 salaried employees who are in administrative, managerial, supervisory, project management or engineer-type roles.

Senator MURRAY—How many of those—roughly, as a proportion—would be on registered AWAs and how many would be on common-law agreements?

Ms Thorp—None.

Senator MURRAY—Sorry?

Ms Thorp—None of our salaried people, our non-award people, are on AWAs.

Senator MURRAY—Then you gave a confusing answer earlier, because you were being asked specifically about AWAs, and you mentioned salaried employees being given a letter of offer. I pricked up my ears, because—

Ms Thorp—I just meant that as a comparison in terms of the process of offering. I think the question was, 'Do we negotiate?' and my comparison was in relation to the fact that, as a

salaried employee, you are basically given a letter of offer. With our AWA people we give the AWA. With our salaried people there is probably a little bit more room to negotiate, but they generally tend to be fairly standard letters of offer as well.

Senator MURRAY—Yes, but they are common-law agreements and that is entirely different. How many employees do you have?

Ms Thorp—About 1,400.

Senator MURRAY—So 400 of those are on common-law agreements. Of the other thousand, how many are on AWAs and how many are on collective agreements?

Ms Thorp—All our employees are on AWAs.

Senator MURRAY—With those AWAs, has the position changed pre and post Work Choices? In other words, pre Work Choices AWAs, were all your workforce on AWAs?

Ms Thorp—Yes.

Senator MURRAY—I see. That is interesting. The level at which common-law agreements can kick in is to be set by the government at $100,000. Is that a very high level for your workforce, depending on the project or the site?

Ms Thorp—Not all our people would hit that level. We have people who do a fly-in fly-out, and some of those people would be sitting under that. A large number of people—our tradespeople, for example—would be sitting above that if you were to include your regularly rostered overtime. But we certainly would have people who would sit under that.

Senator MURRAY—I am not going to ask you the actual percentages, because I suspect it would be commercial-in-confidence, but would there be a significant number of your employees—of the thousand who are on AWAs—who would gross more than the $100,000? Or would there be some?

Ms Thorp—There certainly would be some, definitely.

Senator MURRAY—So those could move to common-law agreements?

Ms Thorp—Yes, they certainly could.

Senator WATSON—There seems to be some confusion about the position of a casual employee, particularly in relation to ITEAs. Have you looked at this and has this caused you a problem?

Ms Thorp—I know it has been raised by other groups in relation to casuals, but we have so few casuals that generally all our employees under AWAs are full-timers. I have not looked particularly into that issue because since I have been at BGC I think we have had two people as casuals. It is not a major part of our workforce by any stretch of the means—or the means of the stretch; no, stretch of the means.

Senator STERLE—We will go with that.

Ms Thorp—I think I just made that up!

CHAIR—This is the annoying thing about being on the public record.

Senator STERLE—I am actually the senator for spoonerisms.

Senator WATSON—People whose contracts have expired need a smooth transition. Are you happy that the ITEAs provide that smooth transition?

Ms Thorp—As long as we can put existing employees onto ITEAs then, yes, there is sufficient time for us to transition through to the new system.

Senator WATSON—So you do not have problems with the no disadvantage test?

Ms Thorp—We have been subject to the no disadvantage test as it was in the old days. Certainly in the industry in which we are involved, I would be very surprised if any of our AWAs would ever not meet the no disadvantage test.

Senator WATSON—I see. Although you do not employ people, have you looked at this issue about the transitional arrangements not being able to be offered under ITEAs to people who have been in your workforce and have come back?

Ms Thorp—That is predominantly our submission; that is predominantly our key point, that we would like to be able to put those people on ITEAs so that they would be similar to a new employee. As we move through towards 2009, we can look at what our options are and which direction we go, depending on the projects that are about to emerge as well and those that are basically about to finish.

Senator WATSON—In the lead-up, you were under the impression that there would be a smooth transition. What were the factors that led you to coming to that position?

Ms Thorp—Probably what I read and heard on the news. Leading up to the election, we did preliminary discussions about the various options but we certainly did not go into a huge amount of detail, on the basis that we had a reasonable period of time in which we could look at our options, get some advice—probably from our lawyers as well—about what is the best way and make sure that any documentation we have drafted is correct and in accordance with the legislation. We did not approach it in an absolute hell-for-leather way to try to get something done, because we assumed there would be this period that we would—

Senator WATSON—Was your company part of the consultative group? Did you have any input or did you get any feedback from what was said at that consultative group?

Ms Thorp—I am not sure about that. I am not aware, as far as BGC Consulting is concerned. I am not sure if the BGC group as such was involved. I am not aware, I am sorry.

Senator WATSON—Thank you.

Senator CORMANN—You mentioned that you have been with BGC for one year, but would you nevertheless be able to give us a snapshot on how AWAs have contributed to the development of your company over the last 10 or so years? Do you have the capacity to make a comment on whether AWAs—

Ms Thorp—I will hand you over to Neal. Neal has been with BGC Contracting since its inception, so he is probably the best person to talk about that.

Mr Edwards—The introduction of AWAs into BGC started around 1997-98 and it has been a gradual progression over the period. That progression has been very smooth. We are fortunate not to be incurring any industrial action as a result of them. For each new contract

that we were successful with, we would develop an AWA appropriate to that particular project.

Employees certainly seem to respond to the clearness of the document that they are employed under, which has been an advantage. We have a very strong involvement on site, where site issues are dealt with on site. From the company's point of view, certainly the use of AWAs has been very successful in the development—

Senator CORMANN—What has been the major benefit? Just in two sentences.

Mr Edwards—The major development probably has been the stability of our workforce under each of the contracts. That has probably been the key one, actually.

Senator CORMANN—In terms of moving forward, our terms of reference are to look at economic and social impacts, impacts on employment and the like. How do you think that not having the capacity, after the transition period, to offer individual employment agreements will affect your business?

Mr Edwards—We are still going through the process of evaluating the effect of that. There are a couple of options out there, but the ITEA, as it was put forward originally, was giving us the breathing space to do that assessment.

Senator CORMANN—You have not completed that assessment?

Mr Edwards—Not totally, no.

Senator CORMANN—If there was an option, rather than to have an ITEA, for you to have had an IEA, an individual employment agreement, subject to Labor's no disadvantage test, would that be attractive to you moving forward as a company?

Ms Thorp—I lodge them.

Senator CORMANN—Okay, but the question stands, in terms of flexibility and choice and having a range of options available. What would be your view? The present legislation before us has a two-year period. What would be your view if there was an option where that could go beyond that?

Ms Thorp—Because the company has traditionally used the individual agreement, I would say that they would probably stick with that—because what you know is what you tend to stick with.

Senator CORMANN—There is no reason other than because it is what you know? You said you have not finished your assessment yet.

Ms Thorp—No.

Senator CORMANN—So, essentially, you do not have a view as to what you might miss out on if you do not have the capacity to enter into individual agreements anymore?

Ms Thorp—Not specifically at that level, no.

CHAIR—You told us earlier that, while there is the odd exception, generally the AWAs are negotiated at your level, at management level, and then offered to employees as a 'take it or leave it'.

Ms Thorp—I guess that would be a fair summary, yes.

CHAIR—I guess everyone does not start and finish at the same time on your AWAs, do they?

Ms Thorp—No.

CHAIR—They start as they come, so at any given time you would have people starting on every day of the year?

Ms Thorp—Yes.

CHAIR—So your thousand AWAs would all have different start and finish dates.

Ms Thorp—Yes.

CHAIR—Are they all generally for the same period of time?

Ms Thorp—No. It depends on when they were first constructed. With some projects that were maybe two years ago they might have had an expiry date of, for example, three years. Some projects are only for a year and a half, and we know that that is a set time. Other projects are much longer, so for them there will be a nominal expiry date going five years henceforth because we know the project is going to be for that long. So, yes, there is probably a range of nominal expiry dates that exist within our AWAs.

CHAIR—Under those employment circumstances you cannot actually have collective bargaining, can you? And that is one of the benefits, isn't it—that you determine what the AWA is, it is presented to employees on a take it or leave it basis and there is actually no ability for employees to bargain collectively around those issues?

Ms Thorp—I do not know whether there is no ability. Certainly in terms of the legislation as it currently stands, if a nominal expiry date has not expired it is questionable whether they can be involved in a collective bargaining process. That obviously means if we have an AWA sitting currently which does not have an expiry date until June next year, a movement from AWAs to collective now would be quite problematic, even if you wanted to go down that particular pathway.

CHAIR—Indeed, because, while AWAs would have a starting date on every single different day of the year, they would also have a finishing date on every single day of the year.

Ms Thorp—Potentially, depending on the AWA on site.

Senator WATSON—I notice that you have not yet mapped out your future path in terms of the options in your employment relationships. Given the difficulty that you are facing, do you think the two-year period of transition for employment agreements is long enough?

Ms Thorp—From a personal point of view, I do not have any difficulty with that time frame. Obviously we have a number of difficult sites, but once you have assessed the direction you want to go then the same principals generally apply and it is a matter of working through your various sites and the pitfalls there are for those particular areas. I certainly personally do not have a particular issue with that time frame.

Senator WATSON—So you think you will be able to make your new arrangements quite adequately without interruption to the efficiency of your business by keeping within that two-year transitional arrangement?

Ms Thorp—I do not think there would be any issues. I do not think having a longer time frame would actually make the process any easier. It is still a difficult process moving from one form of instrument but that always happens when there is a change in government.

Senator WATSON—But what you are insistent on is that employees who come back be able to go onto an ITEA.

Ms Thorp—Yes, that is correct.

Senator WATSON—I think that is fairly unanimous thinking.

CHAIR—Thank you very much for your attendance before the committee today and your submission.

[11.19 am]

PRESTON, Professor Alison Catherine, Private capacity

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Prof. Preston—Thank you. I am here as a member of the Women in Social and Economic Research unit and as a Professor of Economics at the Graduate School of Business at Curtin University.

CHAIR—I must apologise that I have not read your submission, having only received it this morning.

Prof. Preston—I am sorry I could not get it to you earlier.

CHAIR—That is alright. I will read it at some point, but we will fly blind before that. I invite you to make an opening statement to the committee and we will follow that up with questions.

Prof. Preston—Under Work Choices, the group of workers that we are particularly interested in following—which is women, many of whom are in the low-paid sector—were particularly disadvantaged by the industrial relations system, partly because of the provisions in AWAs but perhaps more importantly because of the restrictions on prohibitive content and also the removal of protection from unfair dismissal. When I look through the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 that is in front of you now, I am very pleased with the changes that have been proposed there. My main concern is that I do not think that it goes far enough. I was disappointed to see that it does not yet address the question of unfair dismissal. I know that the ALP has made a commitment to a five-year transition period for AWAs signed now. That is a long and generous period for transition. It would be more favourable for many of the workers who had been disadvantaged to have a shorter transition period, but I understand that that is not what the bill is going to address.

CHAIR—Are there any other deficiencies you see with the bill that ought to be addressed?

Prof. Preston—I was reading the newspaper this morning and I saw a submission from the SDA complaining about the award modernisation process. I have to say that from my perspective it is not something that I would probably be able to offer much comment on. I imagine that the task that the commission will face firstly in identifying the awards to be modernised and secondly doing so in time for the new system to come into place on 1 January 2010 will be an absolutely mammoth one. But, that said, the putting forward of a strong safety net through the award system is very important—absolutely critical—to this system, so I have to say that I am quite happy with what is being proposed here.

CHAIR—Could you outline for the committee the methodology that you used to come to your conclusions in the report?

Prof. Preston—Sure. I apologise for not being able to get the submission in to you any earlier than now. I suppose if I had any other complaint it would be that I wished that you

could have made it a longer period for preparation for submissions than two weeks. The work that I have presented there draws on a number of projects that I have been involved in not just alone but with a number of colleagues through Curtin University and other institutions. One of them was a research report that was undertaken with Professor David Peetz from Griffith University. I believe that he is also going to be appearing in front of this committee or will be making a submission. The research there was looking at what had been some of the wage outcomes under AWAs, comparing them in particular with those under collective agreements. The findings from that showed that, particularly when we used median earnings, the median worker covered by an AWA earns significantly less than people on median earnings in a collective agreement.

Another report that I have drawn on quite considerably in this submission was work that I did work with Therese Jefferson, a colleague at Curtin University. It was a study of low-paid workers in Western Australia. Our focus in particular in that report was on women. It was a qualitative, not a quantitative, study. We had in-depth interviews with, from memory, 21 women to try to get a sense of how the industrial relations legislative changes—not just Work Choices but more broadly—had impacted on workers. The key finding that came out of that Western Australian study was an enormous sense of confusion about the systems. They had no idea as to whether they were covered by the state system or the federal system. Their employers had similarly been unable to clearly articulate to them whether they were under the federal or state system. Many had no idea of what form of agreement they were on. They thought that they were probably most likely covered by an award, but a number of them were on informal verbal agreements.

They were particularly at risk because of their lack of protection from unfair dismissal. Also—and I know that this something that Senator Siewert is very involved with—the simultaneous implementation of the Welfare to Work laws impacted on them. A number of the participants in our study were single parents who were affected by the work tests under the Welfare to Work requirement, and that completely and utterly removed any bargaining power that they might have had when trying to negotiate terms and conditions. Most of them did not negotiate at all. Their pay was set on a take it or leave it basis. We would ask them questions such as: 'Can you negotiate for your pay? Can you ask for a pay raise?' and their standard answer was, 'Yes, but you risk being sacked.' Many of them felt concerned about even raising simple issues on how to improve business processes or business practices for fear of being seen as a troublemaker.

Through that, the conclusion that we came to was that the industrial relations system—which had really deregulated and decentralised all of the pay bargaining as well—far from fostering high-performance work practices, enabled employers to not have to work out how to manage their employees and just gave them that ability to force a range of what we describe as pro-management practices. A number of employees were finding that they had to pay for their uniforms and their training, and there were huge insecurities at work which were also causing a number of stresses beyond that.

These changes were not all about Work Choices. These outcomes were partly because Western Australia, as you would know, had a very individualised system that was first introduced in 1993. Although the Labor government, when it came in, effectively took away

the option of individual bargaining, it did not change employer practices. Senator Marshall, stop me if you want to come in with some questions.

CHAIR—I want to come to Western Australian-specific issues now, because Western Australia does have a higher take-up of AWAs. In Professor Peetz's paper, which was jointly written by you, beneath the aggregate data you both argue that AWAs were introduced for two often very distinct agendas, and I want to ask your opinion about how this happens in WA. One was not to reduce wages and conditions but to simply remove collective bargaining from the workplace. The other agenda was to drive down wages and conditions and increase profit. We have heard from witnesses this morning, primarily those from industries that represent the first example, where wages and conditions on the surface have not seemed to have been reduced—in fact, they have been enjoying growth as a result of the economic times in Western Australia—but the ability for collective bargaining has clearly been removed. In the other example, it is simply used as a means to drive down the wages and conditions of vulnerable people. Does that also happen in WA and to what extent does it happen?

Prof. Preston—I strongly believe that the individual contracts have very much been used not so much to drive down but to hold down the earnings of workers in those sectors. Again, far from being an instrument to introduce much more flexible bargaining between individual and employer, what we have seen in a number of sectors—hospitality, for example—are pro forma AWAs which are being issued by the industry association. Sorry, did you ask a second batch of questions there?

CHAIR—Some of the evidence we have received this morning reinforces that there was little or no negotiation with employees, that it was simply done between project managers and human resources managers. We hear about the high uptake in the mining industry and for people at the high end, where it is being used for another purpose. I am more interested to know whether there are similar impacts to those in other states in terms of low-skilled and low-paid workers—whether, in an economy that is booming, they have had their wages and conditions driven down to the same extent as they have been elsewhere.

Prof. Preston—In some ways you only need to look at some of the outcomes for women's pay, given that many of the employees in the low-paid sector are women. We have not seen women's wages in Western Australia grow at a significantly faster rate than women's wages elsewhere in Australia. And I might just quickly say that the gender pay gap right now in Western Australia is approaching 27 per cent, while nationally it is around 16 per cent. That is obviously partly because the mining sector has much more representation of men and they have had higher gains.

But, to go back to a comparison of the low-paid sectors, the wages of women have not really been moving at all, when we look at that relative to the rest of the state. Latterly there has been a slight increase in that relativity. I do not believe it is because women in Western Australia are starting to do better. I think it is probably that women elsewhere in Australia are not doing so well and that that has taken that average down. Again thinking back to the examples that came up for us in the qualitative research, there is a lot of job churning right now. Child care is an area which has enormous shortages and you would have thought, based on conventional economics, that where there is a shortage and an opportunity to individually

bargain then some of them might use those individual bargains as a way of attracting some of the labour. But that is absolutely not what is happening.

When I was preparing this submission last night I also took the chance to read again some of the research that has come from the Fair Pay Commission. I may struggle to remember the statistics, so I note for the record this might not be accurate. From memory, what I read was that 6.7 per cent of employers in the study released by the Fair Pay Commission paid less than the federal minimum wage. So having a minimum wage does not necessarily guarantee that you will even get that much. Again in Western Australia, many poor employment practices have been revealed. To a certain extent the buoyant economy has cushioned employees, in the sense that they have perhaps been able to move jobs as a way of getting slightly better terms of employment—maybe not having to buy their uniform, perhaps getting a bit more of the hours they want—but they have not been seeing their pay increased at the same time. I think the danger for these employees is when the economy turns—and it is probably already turning in some states, though not in Western Australia. But when it does turn in Western Australia they will be the ones that will be put even more at risk in the current system.

Senator SIEWERT—I want to pick up from where you left off on the pay equity issues. Would you suggest that that could be addressed through the award modernisation process? How do we now fix the problem that we have?

Prof. Preston—It has been a huge problem in Western Australia since the early 1990s. I have been looking at it for a while trying to understand what is going on, in particular to understand why women in Western Australia fared so badly compared to women nationally, given that their industry occupational distributions have been much the same. The big slide came when Western Australia first went down the path of individual bargaining and, essentially, they have just never had a chance to recover. There has not been the opportunity to catch up for the period when wages effectively were frozen for a number of women in low-paid sectors. In that vein, then, I would be optimistic—I guess that is as much as I can say: I cannot say I would be sure, but I would be optimistic—that pouring back into the system a decent, solid, award framework would absolutely have the potential to do a big catch-up, which women in particular in Western Australia need. I am sorry, Rachel, there was another point I was going to make there but it has escaped my mind.

Senator SIEWERT—So you think that should be taken into account through that process.

Prof. Preston—There is no question. Women are by far and away the group that is most dependant on the awards, so there is absolutely no question that award process has to look at the issue of pay equity at the same time.

Senator MURRAY—Professor, the percentage of people on individual agreements is around 40 per cent or more. The percentage of people on statutory agreements is around six to seven per cent. As you know, the statistics are hard to get.

Prof. Preston—Yes.

Senator MURRAY—Are women disproportionately represented in common-law individual agreements?

Prof. Preston—Senator Murray, can you give me a second to check the statistics. I do have them here in table 6. I know that you have not had a chance to look at the submission. My apologies; I have two table 6s. It is the first table 6 on page 16. The female total for unregistered individual agreements is 26 per cent; the male total for unregistered individual agreements is 36.6 per cent; and for all people it is 31 per cent. So my answer to your question would be that women are underrepresented in the unregistered individual agreements. What you can see from that table is that they are over-represented in the awards system, and, if you are a part-time employee, they are particularly over-represented in that award system and under-registered in individual agreements.

Senator MURRAY—Bearing in mind that the government supports common-law individual agreements, and also bearing in mind that individual statutory agreements can be of many kinds—Work Choices is just one kind; a very bad kind, but one kind—do you take the view that individual statutory agreements are always going to be worse than common-law individual agreements? And if you do, why?

Prof. Preston—No, I do not. I think, again, given that we know that the individual statutory agreements are going to be for employees who earn $100,000 or more, I think that that in some ways is a very fair cut-off point. At that point you can expect that individuals will have a bit more ability to negotiate terms that are going to be suitable to themselves.

Senator MURRAY—My general point is this: if you devise a fair individual statutory agreement, the protection for both employees and employers—and, by the way, it needs to be enforced by a strong regulator—is greater than under the common law, as a general principle. Do you accept that argument?

Prof. Preston—Yes, I do.

Senator MURRAY—I want to turn to your unfair dismissal remarks. Mr Rothwell from Austal, a witness earlier today, told us that Austal had 1,200 employees. Under the present law, they are all subject to unfair dismissal provisions because there are over 100 employees. So your remarks relate to below the 100 employees. You might not know but I am a strong supporter of unfair dismissals for all employees subject to the proper probationary period and various protections. Do you support the government policy of cutting off organisations below 15 employees from unfair dismissal provisions?

Prof. Preston—No, I do not. My position is that all organisations should be subject to the unfair dismissal provisions—again, as you said, subject to probationary periods et cetera. Again, many women work in small businesses. The small business sector is very large in Western Australia—unfortunately, I do not have the statistics here—and many organisations work with less than 15 employees. I do not see why, if you work in an organisation of less than 15 employees, you should not be able to access the same provisions as your colleagues in slightly larger firms.

Senator MURRAY—Is the main point in your submission—and I obviously have not had a chance to read it—that this bill would be improved if unfair dismissal provisions were restored immediately because that would allow a greater measure of fairness to exist during the transition period? Is that what you are saying to us?

Prof. Preston—I do not think I could have put it any better.

Senator MURRAY—I thought I led the question rather well!

CHAIR—And I am happy for you to continue along that vein, Senator Murray.

Senator MURRAY—The essential argument of the coalition was that small business should not be subject to unfair dismissal provisions, yet they applied it at 100 employees, which is greater than the ABS definition. So you would argue that it would be a significant improvement if unfair dismissal was at least to apply at the level already determined by Labor and agreed to by the coalition, which is essentially at the small business level. Labor is saying 15 and the coalition might say 20, but there is not that much difference.

Prof. Preston—I am sure you will not be surprised to find that I agree with you again. No, I would absolutely. The argument around unfair dismissal is very much that, if you put it there, it is going to limit employment growth. I think the other arguments around unfair dismissal have to look at the productivity effects of those provisions. I think the onus comes back on the employer. With suitable probationary periods there, they have ample time to work out whether or not an employee is suitable, is performing, and do not need to have the protection of a system that says that you are able to dismiss at will.

Senator MURRAY—Are you aware that the bulk of unfair dismissal cases in Western Australia—and by 'the bulk' I mean around 80 per cent, if I remember my figures correctly—were under the very weak state law, not under federal law? In fact federal unfair dismissal applications in WA, half of which never succeeded, were very low. Are you aware of that?

Prof. Preston—No, I am not.

Senator MURRAY—Would you like to receive a graph and some tables and figures from me?

Prof. Preston—I would love to, thank you.

Senator MURRAY—I will send them to you.

Senator WATSON—I have some problems with the analysis of Peetz and Preston. You refer to hourly rates. I would expect that hourly rates would produce the sorts of figures that you have given, but that ignore other factors like conditions and productivity bonuses, all of which can be converted to cash equivalents and need to be recognised. Therefore, you need to look at the total take-home wage plus the benefits of the other conditions which may be above what I might term award type conditions which really should be able to be expressed in monetary terms. I think your analysis really does not present the full picture. In fact it provides a biased picture because I would have thought AWAs generally would pick up these issues such as bonuses, other conditions of employment, productivity incentives and so on—sick leave, annual leave, whether you might get an extra week under an AWA compared with award type conditions. Unless you build in those factors, you are really not providing a true comparison. Traditionally, you would have to have a lower hourly base rate in order to be able to build incentives into the system. So I am not sure that your figures really would produce a direct comparison. Would you like to comment?

Prof. Preston—I would love to comment. I think I would not be the only researcher who has enormous frustrations working with the data that is available. This data is from the Australian Bureau of Statistics May survey on employee earnings an hour. As I am sure you

are aware, at the last survey, the 2006 survey, they changed their definition of hourly earnings. You can see that the second table 6 talks about average hourly total cash earnings. Unfortunately I do not have the ABS publication in front of me to give their precise definition of total cash earnings, but the key change in that was to start to include the value of bonus payments, fringe benefits et cetera in the calculation as well.

Senator WATSON—Those sorts of benefits would not be included in cash earnings, would they?

Prof. Preston—I take the point that you are trying to make. It needs to be looked at. I need to have another look at what the ABS definition of total cash earnings is. I would have thought that, if you strongly believe that it should be there, that is an issue to take up with the Australian Bureau of Statistics. We can only work with the data that is available. The other point to make is that these earnings data do not really let us have a full picture of wages that will be earned outside non-standard hours of work.

Senator WATSON—That is the point I am making.

Prof. Preston—Yes. It is our frustration. We have a paper, which I am more than happy to send to you, on some of the monitoring issues and on the data that is required if we are to fully and effectively monitor the current industrial relations system. We face the same frustrations as you do in trying to work with what is there. But, working on the basis of averages, what we have been able to show, certainly from an hourly total cash earnings perspective—and, again, we are looking at non-managerial employees, who tend not to have access to the bonus payments that you are talking about; women in particular tend not to have access to them—is that there is a sizeable wage gap between average earnings in AWAs and collective agreements.

Senator WATSON—Given your background in industrial relations and as an expert in wages, are you confident that the award modernisation, which is yet to come, can deliver the flexibility that is necessary in a technologically advanced society?

Prof. Preston—I do not know what the flexibility clauses will be that will go into the award modernisation process, but when I look at the workers who are currently dependent on that award system and I look at the terms that have been negotiated in the AWAs, there is no sense that right now individual bargaining has been used to give flexibility. From memory, 60 per cent of Australians right now are unable to negotiate either their start or their finishing times. For 10 years, under the previous government, business had a lot of opportunity to go forth and negotiate the flexibilities that they have been calling for. Some sectors have obviously utilised that and taken advantage of it—and that is fine—but the sectors that I am concerned about right now, where the growth of AWAs has been prevalent, have exhibited no sign that they are using them in that flexible way in terms of negotiating different outcomes. So I do not imagine for a minute that the award is going to be a constraint. If I could add another point, that I probably should have made in my opening statement: much of the employment growth in recent years has been in the part-time labour market. The part-time workers, most of whom are women, many of whom are on casual contracts, are highly dependent on the award system. There has not been much collective or individual bargaining

in that part-time labour market sector. And that is the sector that has the most to gain from an award modernisation process.

Senator WATSON—I have some concerns about people who are particularly good. Take universities. If a university wants to bring in an exceptionally talented professor from overseas, an AWA can probably provide the sort of flexibility that is necessary to attract that person, whereas a standard across-the-board type of arrangement would not be attractive in respect of the high scholarship that a vice-chancellor might be seeking in order to give a centre of excellence type of approach to a particular faculty.

Prof. Preston—I think, though, that there, if they are trying to bring in that person, most likely that person is going to be on at least $100,000 or more, so that flexibility will still remain for them. But the other thing about AWAs, particularly as they have been applied to higher education, is that the literature on strategic pay shows the absolute importance of setting up pay systems linked back to your strategic plans. What is possible is there under collective bargaining. As for the high-flyer that they want to bring in from wherever, that person is not going to come in for much less than a professor's salary, which, at Curtin University anyway, is around $130,000 a year, so they would be able to individually negotiate.

Senator CORMANN—I would like to pursue Senator Murray's initial line of questioning. You appear to be very supportive of the abolition of individual statutory and primary agreements—I think that is fair to say. Indeed, you were saying that the legislation has not gone far enough. Understanding that individual transitional employment agreements are going to be subject to a no disadvantage test again, do you continue to be concerned about those individual agreements or don't you have an objection to those?

Prof. Preston—I don't. I am happy to accept what has been put forward in the bill. I think the no disadvantage test, as we saw when they reintroduced the fairness test—

Senator CORMANN—But my question goes a little further. So you do not have any objection to individual employment agreements per se as long as they are fair, so as long as they are subject to a no disadvantage test?

Prof. Preston—No. I am sorry; maybe I misunderstood it. I would much prefer to see the transition period from individual bargaining being much shorter and a moving back to collective bargaining or the award system. But the main problems with the individual bargaining that was there were that (1) individual bargaining had the capacity to override collective bargaining and (2) when it was first introduced the no disadvantage test, or the fairness test, was set too low. With those changes, with a particularly robust no disadvantage test, at least there is a chance of a level of protection for people who are covered. But fundamentally I would much rather see that system changed.

Senator CORMANN—But Labor's individual employment agreements will be subject to a no disadvantage test, so that is a given. What is your main objection to individual employment agreements even with a no disadvantage test?

Prof. Preston—Firstly, I do not know what is going to be in the particular no disadvantage test. I am assuming, from what I have read, that the no disadvantage test will also be that the standard cannot be less than what is going to be in the minimum conditions in the awards. I

suppose perhaps there is no strong objection to it, but if I were to say what system I would prefer to see in terms of bargaining arrangements I would say I would absolutely much prefer to see a system that encouraged collective bargaining over individual bargaining.

Senator CORMANN—What is it that is causing you a problem with individual employment agreements?

Prof. Preston—In some ways the problem has not been about the formally registered individual bargaining; it has not been around that. The main problem has been around the informal bargaining and the informal arrangements whereby a number are not following the conditions of employment that are set up.

Senator CORMANN—You mentioned that you were concerned about the overriding of collective agreement conditions. Are you aware that there are instances of union negotiated collective agreements that have also negotiated away award conditions? Have you got a view on that?

Prof. Preston—First of all, I am not aware that that has happened. I am sorry, but I am going to have to pass on that question.

Senator CORMANN—Okay. In terms of moving forward, your view is that what we need is a solid award framework. Bearing in mind that we have got 4,300-odd federal and state awards and about 105,000 employee classifications, obviously—would you agree with this?—it is a very complex system given the way it currently is.

Prof. Preston—It is a pity the transcript will not pick up my facial expressions here. I am just so happy that I do not work in the Australian Industrial Relations Commission so I am not charged with all this.

Senator CORMANN—So you agree it is a very complex system. For the employees that you represent and are talking on behalf of, that can be pretty cumbersome and I guess frightening.

Prof. Preston—I am aware that Western Australia has been down the path of award modernisation as well.

Senator CORMANN—When you say 'a solid award framework moving forward', what would that require and what is award simplification that we would need, from your point of view?

Prof. Preston—I do not think I have the time here to really detail—

Senator CORMANN—In three sentences?

Prof. Preston—To work out what that system is. It is quite clear that the awards need to have a catch-up there because they have been left to wither on the vine for a long time. It is also clear that the parties are not going back to where the award system was in the 1980s. But if the system is to be structured around awards as a safety net floor then obviously there is a huge catch-up that needs to be done. I am aware of the mammoth task that is there, of the thousands of awards. I think there is a huge challenge ahead to try and identify by the middle of the year the ones that they are going to tackle and to have that done in time for 2010. I do not have any recommendations on how to best approach it other than perhaps to say—but I

am sure this would be happening anyway—that the state tribunals and the state institutions are involved. I know through my conversations with John Spurling the register at the Western Australian Industrial Relations Commission has been doing that with Western Australian awards. I am sure there is a lot of experience to capture there and to take forward. But I can only see this as a huge job for some organisation out there.

CHAIR—I wanted to come back to the issue that Senator Watson raised with you about the hourly rate, because I am not sure I understand the context of your response. I think the proposition that Senator Watson was putting to you was that the hourly rate may not include other benefits that may have been negotiated. If you are actually putting a monetary value on some of those things, the hourly rate would be higher. Is the reverse actually true and is there evidence of the reverse? We actually know that most AWAs actually removed conditions of employment; in fact, a large percentage of them removed everything apart from the five basic conditions. Isn't it probably more able to be argued that the hourly rate reflected here is in fact higher than the real rate of remuneration for employees?

Prof. Preston—I do wish your argument had come to me earlier. That would have been a fine argument to respond to Senator Watson with. I think it just goes back to the heart of the matter of how to have decent, reliable statistics—I am not trying to suggest that the ABS does not do that; they absolutely do the best job that is there, but they are aware of the limitations of their statistics as well and of the comparisons that can be made. I am happy to take both questions that have been put to me, and in fact I am curious myself now to go back and have a bit deeper look at the research around that, perhaps prepare a short research note, if anything to back up the robustness of the claims that we have made there. I say that I stand by the claims there. I think what we are showing here is hourly earnings for the median and the average, and, when we look at that, AWAs have not performed as well for the average person as collective agreements have. But there is no harm my putting an addendum or a footnote to that research.

CHAIR—Thank you for that. Are there any final questions?

Senator STERLE—I have one, Chair. Professor, when you talk about the small-business sector, where the majority of women are being underpaid, or rather the gap is there, are there any industry specific examples? Is one industry worse than any other?

Prof. Preston—I did actually do some research on this in Western Australia a while back when Western Australia's pay gap first widened. From memory, then it was the hospitality sector. That is going back to the early 1990s. I have not looked at it again for a while but I could have a quick flick here, and hopefully I have labelled my figures better than I have labelled my tables—

Senator STERLE—If you have not got it there, please take it on notice and come back to us.

Prof. Preston—I am looking for the graph which shows where employment growth has been strongest and where earnings have been—

Senator CORMANN—The early 1990s were pre workplace agreements, of course.

Prof. Preston—Yes, but not in Western Australia. Western Australia had a highly individualised system.

Senator STERLE—So you are saying, Senator Cormann, that it could be worse.

Senator CORMANN—Or it could be better.

Prof. Preston—I think the main point to make is that the areas where employment has been growing strongest—and it has been fuelled by part-time employment, which is, again, mostly women—are also the areas which have had the lowest wages growth over the last 15 years.

CHAIR—Thank you very much for your submission and your presentation to the committee today. If you are able to provide further information to the committee, we would value that.

Prof. Preston—Thanks very much. Thanks for the opportunity.

[12.01 pm]

HAMMAT, Ms Meredith, President, UnionsWA

CHAIR—Welcome. Thank you for your submission to the committee. I invite you to make an opening statement, to be followed by questions.

Ms Hammat—We would like to thank the Senate committee for the opportunity to make a presentation today in support of our written submission. We welcome the intention of the bill to abolish workplace agreements and commence the process of building an appropriate safety net of awards and legislative minimum standards.

We support the abolition of AWAs, as it is our contention that they have had a negative impact on employees, on society and on the economy. AWAs have been highly disadvantageous to many or most employees who have been employed under them. We do not believe that there is sufficient evidence to support the claim that they have had an overwhelmingly positive impact on things such as employment, inflation or productivity levels in general.

In terms of their impact on employees, our submission refers to statistics which demonstrate that, overall, employees have been disadvantaged by AWAs. On page 2 you will see that there are a series of statistics which demonstrate the conditions that workers have lost. Seventy per cent of AWAs have removed shiftwork loadings; 68 per cent have removed annual leave loadings; 65 per cent have removed penalty rates; and 63 per cent have removed incentive based payments. I will not read the whole list; it is there for the senators to look at. I am happy to go back to it.

CHAIR—It took many, many hours late at night for this committee to extract that information during the Senate estimates process, so the committee is fairly familiar with it.

Ms Hammat—I will not bore you with its repetition. But they are important statistics—

CHAIR—Yes, they are.

Ms Hammat—and it is important work that the committee has done because it demonstrates the impact of AWAs on employees. Of course, that has been one of the things that it has been difficult to get information about. We are happy to see those statistics publicly available. We also believe that AWAs increase the overall hours of work and reduce the cost of labour. Not surprisingly, those sorts of impacts have been felt most dramatically by the most vulnerable in the labour market—that is, by women, migrants and young people. In our submission we detail three examples of how employees have been negatively affected by AWAs, but I am quite certain that there are many, many more examples. There is certainly plenty of evidence and anecdotal stories to support that.

In terms of the impact on society, we believe that there is evidence that the interaction of AWAs and individualised bargaining is associated with a worsening gender pay gap. As I understand it, currently the gender pay gap in WA is 25 per cent. That is as of May 2007. We believe that that is the worst of any state in Australia. Attached to our submission was a paper by the WA Fair Employment Advocate, Helen Creed. In her paper she cites research by Peetz and Plowman which describes two significant periods where the gender pay gap worsened in

WA. Those two occasions were, first of all, with the introduction in the state industrial relations system of individual workplace agreements in Western Australia—so the period between 1993 and 2002—and, secondly, when that legislation was abolished, in 2002, and people moved employees from individual workplace agreements in the state industrial system onto the AWAs in the federal system.

We also submit that AWAs undermine a balance between work and family responsibilities. AWAs are generally associated with longer working hours and more discretion by the employer over when and how hours are worked. We think this has a very negative impact on families and contributes significantly to the stress that many families feel as they try to balance their family responsibilities with their workplace responsibilities.

To move on briefly to the economy: many supporters of the Work Choices legislation and AWAs predict an adverse impact on productivity and profitability if the AWAs are abolished. In particular the mining and resources sector have been vocal with this point of view. We think that this is an overstated argument, however, and that the prosperity of the mining and resources sector is being driven by factors like commodity prices rather than any particular industrial relations arrangement. We do not believe that AWAs are popular within the workforce in the mining industry, and the take-up rate of these instruments in the mining industry really reflects the fact that most people in that industry are now employed on the basis of a 'take it or leave it' arrangement where an AWA is the only instrument offered.

Again I refer you to the work of the WA Fair Employment Advocate, Helen Creed. On page 22 she cites research conducted by Canadian economist Dr Jim Stanford in relation to the mining industry and the use of individual agreements. That work found that mining profits were due, as I said earlier, to increases in global mineral prices rather than the use of individual agreements; that there had been no dramatic changes to work practices and labour costs in the mining sector through the use of AWAs; that average labour productivity had declined since the introduction of AWAs, it had not increased; that the use of AWAs had not elicited extra investment on job creation; and that it was unlikely that the removal of AWAs would have any detrimental economic effect on the mining sector.

In conclusion, we submit that the abolition of AWAs will be positive for society and for employees. We welcome the bill and we look forward to that bill becoming law so that we can all enjoy the benefits that come from creating fairer and more balanced workplaces in Australia. That concludes my opening comments.

Senator WATSON—Would you like to comment on the issues I raised with the previous witness about hourly rates?

Ms Hammat—I am sorry, I did not hear your questions to the previous witness about hourly rates. Perhaps you could repeat them.

Senator WATSON—I am just concerned that hourly rates do not always reflect the total benefits that may be offered under an AWA or any sort of arrangement. They do not appear to build in fringe benefit arrangements—and these are quite numerous—salary sacrifice arrangements or certain incentives or bonuses. Therefore my proposition is that the figures from the ABS undervalue the hourly rate and therefore any comparison based on figures provided by the ABS of awards with nonawards, or of people under AWAs with people on

awards, does not necessarily paint a complete picture. You may have heard that Professor Preston was prepared to go back and have a look at some of the underlying assumptions of those figures. Would you like to comment on that? I see that as skewing the picture a little.

Ms Hammat—To address the question, the statistics which are on page 2 of the work that this committee has done look at the provisions that are not contained in AWAs that were contained in awards. What we see is a significant pattern of people's entitlements being removed by the use of AWAs. The list is there: 70 per cent of them remove shiftwork loadings, they remove annual leave loading penalty rates and they remove things like rest breaks. So we see a significant proportion of AWAs that remove entitlements from employees.

I can also reflect on the anecdotal evidence that we hear quite strongly when we discuss the impacts of their agreements with employees. Overwhelmingly, they report that the workplace agreement has removed certain entitlements where there are award entitlements but that it has not been replaced by the things you mentioned, perhaps salary packages or incentive bonuses or, if those things are in place, they are not adequate to compensate for what the agreement has also taken away.

Senator WATSON—Is the fairness test picking up those sorts of problems?

Ms Hammat—It is fair to say that there has been some difficulties with how the fairness test has been administered. It excludes certain employees, so people who earn over $75,000 are not covered by that test. It also creates other exclusions. Attached to our submission, as I said earlier, is some work that was done by the Fair Employment Advocate in Western Australia. That document refers in depth to the fairness test and how it is not adequate to ensure that people's entitlements are protected. It does not do the job in a way that is adequate to ensure that people are not left worse off. The anecdotal evidence that we have supports that.

Senator WATSON—From a union point of view what does the no disadvantage test provide above the fairness test?

Ms Hammat—I suppose one of the significant things about the no disadvantage test is that it will reintroduce a comparison against any collective agreement in the workplace and that is certainly an important indicator. The previous no disadvantage test prior to the Work Choices legislation was certainly more rigorous in how it was assessed and applied and did not have the sorts of exclusions that the current fairness test has. We would submit that the no disadvantage test that is being proposed goes further than the current fairness test and we see that as a positive development. I think it is probably fair to say that we will judge how that performs on experience of it once it is implemented. If, in fact, it does not do the job that it sets out to do then we will make further submissions about that at the time. We see that as a positive step certainly at this stage.

Senator WATSON—Are you bringing your witness in from the north-west?

Ms Hammat—I should have clarified that. We did hope to have a witness but that person has been unable to come. They are in the north-west of the state and so it is not easy for them to come down to the hearing today. I apologise for not clarifying that with the committee earlier, but there will be no witness joining us today.

Senator CORMANN—I would like to pursue Senator Watson's line of inquiry in relation to the no disadvantage test. The bill, as it is introduced by the government, will have an individual transitional employment agreement for a period of two years subject to a new no disadvantage test which you say you approve of compared to what was previously in place. As long as the government enforces, monitors and manages it properly would you have any objection to that type of fairer—from your point of view—individual employment agreement being available as an option for the long term?

Ms Hammat—You are asking, subject to the no disadvantage test as it is proposed working effectively, whether we would have any objections to individual agreements or AWAs continuing?

Senator CORMANN—Individual agreements in the form as introduced in the current bill by way of transitional arrangement. What would be your view if, subject to all of the tests et cetera that are currently being introduced, rather than for two years it was a permanent arrangement?

Ms Hammat—Our position is that we support the abolition of individual contracts.

Senator CORMANN—What is your main objection?

Ms Hammat—As the union movement we believe in collective bargaining and we support collective bargaining as a way that employees can be properly and fairly represented. There is an inherent power imbalance in the relationship between an employer and an employee. There are many reasons that an employee is not going to be able to sit down and bargain with their employer on the same basis. They are not equally powerful and, in many cases, employees feel very vulnerable in that circumstance and not adequately protected or adequately able to negotiate the things that are important to them.

Senator CORMANN—What if there is a no disadvantage test which is properly enforced? And you actually agree that that no disadvantage test is superior to anything that has existed before. What is actually—

Ms Hammat—The previous arrangement prior to the introduction of Work Choices provided for AWAs and a no disadvantage test. Our experience during that time was that it did not afford employees adequate protection, primarily because they did not enjoy the same bargaining position as their employers. So when they sat down to negotiate those agreements, in fact the negotiation was a myth. Employers would often have a standard workplace agreement that had been offered to every employee in that workplace, and it was offered to them really on the basis of take it or leave it, without any consideration of the individual employee's circumstances or needs.

Often those AWAs were made a precondition to either employment or promotion and not to actually negotiate or give consideration to what that employee needed. In some cases they were just a template; for want of a better description. Employers in an industry adopt a template AWA and then that is offered to people as: 'This is how we employ people here.' So even though there was the protection—going back to the pre Work Choices days—of a no disadvantage test, we would say that that did not really facilitate any kind of genuine or real bargaining because of the inherent power differences between those two parties.

Senator CORMANN—You mentioned that from your point of view individual employment agreements have been used to negotiate away award conditions. Are you aware of examples of union negotiated collective agreements where award conditions were negotiated away?

Ms Hammat—Clearly through collective negotiations there are also processes where award conditions are modified or altered, but what we would say is that under collective agreements employees simply do much better. So while it is not a unilateral decision by an employer to remove certain entitlements—

Senator CORMANN—Do you have data to substantiate that under collective agreements they do better?

Ms Hammat—The data that we would have would be based on the report that was also submitted to you prepared by the Fair Employment Advocate. I understand—and I would need to find it in the report to refer you to it—that, when compared to collective agreements, people on AWAs do not do as well in terms of their overall bargaining outcome.

Senator CORMANN—You mentioned the gender pay gap in Western Australia and it not being in a position that you would like it to be. Have you got the data for 1993 as well as the data for more recent years?

Ms Hammat—I do not have it with me today.

Senator CORMANN—Would you be able to provide that on notice?

Ms Hammat—Yes, I am happy to provide that to you.

Senator CORMANN—Thank you.

Senator MURRAY—With the proviso that statistics are difficult to get, the previous witness, Professor Preston, provided Australian Bureau of Statistics data of May 2006 for the breakdown of agreements that showed—I will round out the figures—that award only was 21 per cent, collective agreements were 44 per cent and individual agreements were about 35 per cent. Common-law individual agreements are 10 times the number of statutory individual agreements. I accept the condemnation of Work Choices AWAs, so let us put that aside. Labor government policy is to support individual common-law agreements. Do you agree with that policy?

Ms Hammat—I think that the reality has been that there are various arrangements that exist in employment relationships and there have been for some time. There have been parts of people's employment relationships that have been regulated by awards and certified agreements and certainly aspects of their employment arrangements have also been covered by elements of common-law contracts.

Senator MURRAY—If, roughly speaking, one-third of all employees are on common-law individual agreements, do you consider statute as superior or inferior to common law with respect to protecting the rights of employees?

Ms Hammat—I could offer my personal opinion but I am not in a position to be able to comment on behalf of the union movement in relation to that because I do not have instructions. Sorry, Senator.

Senator MURRAY—Let me help you. It is my contention that statute provides greater protections for employees than common law. Common law is master-servant; it is decided by jurisprudence. The weakness of statutory agreements has been that the statute itself has been unfair, but, if you constitute fair statute with a good regulatory device then you will end up with far better protection for both employees and employers than in common law. I do not understand a union movement which accepts unfair common-law agreements and opposes fair statutory agreements for individuals. I am not talking about Work Choices AWAs—those deserve to be condemned. I am talking about a principle. How do you respond to that argument?

Ms Hammat—Our stated preference is for collective bargaining. That is what we see as the primary vehicle for protecting—

Senator MURRAY—But that is your business; that is self-interest, isn't it?

Ms Hammat—We believe it provides for the best outcome for employees, so it is not necessarily an issue of self-interest.

Senator MURRAY—By the way, I agree with that.

Ms Hammat—Our job is to protect employees, and we believe that collective bargaining gives them the best outcomes, so we certainly see that as the primary vehicle. In relation to the issue of common-law contracts, there are clearly groups of well-paid employees—I believe the ACTU preference was for employees earning above $100,000—that do have a different bargaining position to that of many others in the labour market who are lower paid. So there is a desire to create for those employees the ability to negotiate with their employer, but recognising that the majority of the workforce are not in that privileged position and so require some kind of protection.

Senator MURRAY—Do you accept that it is possible to argue that by refusing to allow fair statutory individual agreements the union movement and the government are just throwing a third of Australian employees to the employer wolves under common law?

Ms Hammat—I do not accept the argument that we are throwing them to the wolves. I believe that it is important to create an appropriate safety net and that this bill that is before the Senate obviously goes much further to create that kind of safety net. We recognise that there are employees and employers that will have different arrangements in their workplaces to accommodate them. There are arrangements with collective agreements that can protect the rights of employees and hopefully also provide the flexibility that employers are seeking if they are looking to enter into those arrangements.

Senator MURRAY—A previous witness, Professor Preston, put forward the proposition that employee protections in this bill would be enhanced if unfair dismissal provisions were restored for those organisations with fewer than 100 employees. What is the policy of UnionsWA with respect to unfair dismissal provisions?

Ms Hammat—We would wish to see the unfair dismissal provisions changed as soon as possible.

Senator MURRAY—Would you stop at 15 employees?

Ms Hammat—I suppose it begs the question: why would an organisation with 15 employees be treated differently to one with more than 15?

Senator MURRAY—I happen to agree with that.

Ms Hammat—With the number of 15?

Senator MURRAY—No—with your argument.

Ms Hammat—It seems very arbitrary to simply move the benchmark from 100 to 15. We see 15 as a clear improvement. We would want to see those aspects of the legislation changed as soon as possible. We are disappointed that the unfair dismissal provisions are not changed in this bill rather than waiting. Those provisions leave many employees very vulnerable in their workplaces, and the sooner they are changed the better.

Senator SIEWERT—I do not think you were here earlier, Ms Hammat, when a number of employer groups were talking about the fact that you cannot apply ITEAs to former employees. They were running the argument that there are a number of seasonal workers, and BGC were saying they have people that come on in different projects and so they cannot then offer them ITEAs. Have you heard that argument, and what is your comment on it?

Ms Hammat—I have not heard that argument before, and I was not here earlier when they said that. I suppose any comment would be off the cuff. Perhaps it would be better if I went away, had an opportunity to consider it and talk to representatives from those unions that are working in those industries that are perhaps able to provide more comprehensive comments. If you like, I could take it on board and get back to you.

CHAIR—If you are going to do that, it is outlined in the BGC submission and also the submission from the Chamber of Commerce and Industry of Western Australian. They outlined that proposition.

Ms Hammat—I do not have copies of those submissions.

CHAIR—They are on our website.

Ms Hammat—I will get those off the website and come back to you.

Senator SIEWERT—I have another question about award modernisation. Are you happy with the award modernisation process that is proposed? Do you have any comments on the process that is going to be undertaken to do that?

Ms Hammat—No, I do not have any comments that I can make about that at this stage. Do you want me to take it on notice also?

Senator SIEWERT—Yes, if he could.

Senator FISHER—I am referring to your submission on page 2, where you talk about the overwhelmingly negative impact that AWAs have had on working people. Do you draw that conclusion, in part, from the statistics that you quote before that paragraph—for example, you referred to statistics released by the Deputy Prime Minister from a sample of AWAs lodged with the Workplace Authority between April and October 2006?

Ms Hammat—That would be one thing, perhaps, that we have based our conclusion on, but the other evidence is the anecdotal evidence that we have had over many years about the

negative impacts on individual employees. Also, there is the work that has been done by the Fair Employment Advocate in this state, which is attached to our document. That provides further explanation, and statistics and analysis based on research that is available. So our conclusions come from a variety of sources.

Senator FISHER—Have you looked at the data to which you referred or has Unions WA looked at the data to which you referred in your submission—the data which referred to that Deputy Prime Minister's release?

Ms Hammat—No, we have not done any further analysis on that data separate to what has been provided.

Senator FISHER—I asked that because I suggest that you might think about doing so before you quote that data, bearing in mind that at the Senate estimates recently the Workplace Authority's Barbara Bennett tendered a document which was a briefing note to the government. My understanding of part of the evidence that she gave was that, whilst the statistics did indeed show the removal of certain conditions—and you have listed them in the first and second pages of your submission—there was no data about with what those conditions have been replaced. Indeed in her view it could be the case that they were replaced, for example, by a wage rise. So while some conditions were taken away it is entirely conceivable, at the very least, that they were replaced with more money. So I suggest that you have a look at the data which you are drawing from in your submission and get back to us on it.

Senator Sterle interjecting—

Senator FISHER—My question was whether Ms Hammat had looked at the data herself. She had not so I would be interested in her response.

Ms Hammat—Perhaps, just to clarify: that data is part of what contributes to the conclusion that we think AWAs are not a positive for employees. I think I said in answer to your question that it is not the only evidence that we rely on. There has been other research done that bears out the same sort of story. The anecdotal evidence that we have had over many years bears out the same kinds of conclusions. There is a reference in our submission to three examples where the same conclusion comes out of that. I take on board your comments, Senator, and I thank you for them, but it is not solely on that information that we have reached the conclusion.

Senator FISHER—Have you done research and empirical analysis of what will be, in your view, the effects of the transitional bill were it to become law?

Ms Hammat—In relation to which aspects of the transitional bill?

Senator FISHER—All and any.

Ms Hammat—We have not done any empirical analysis at this stage. That bill has only recently been available in a public sense. Our resources are limited and we do not have the luxury, unfortunately, of substantial research staff to be able to work with those sorts of global models. Clearly it is an issue that the union movement is very concerned about. We have watched very closely the impact that AWAs have had on working people in this state over the

period of time that we have had them. Equally, we will watch and gather data about how the transitional provisions will have an impact on people as well.

Senator FISHER—What do you think will be the impact of the transitional bill on jobs for Western Australians?

Ms Hammat—Clearly Western Australia is enjoying a significant economic boom. We, at face value, can see no reason why the provisions of the transitional bill would have any kind of negative impact on employment.

CHAIR—Ms Hammat actually went to those issues in her initial presentation.

Senator FISHER—My apologies. Do you think workers will be better off under the transitional bill?

Ms Hammat—Yes, we do. We think they will be significantly better off as the result of the abolition of workplace agreements. The change from the fairness test to the no-disadvantage test is a positive development. The removal of the right to unilaterally cancel collective agreements is a very positive development in terms of creating more balance and fairness in the system. So, yes, we believe people will be better off.

Senator FISHER—Thank you.

CHAIR—Just on the data question, members of this committee were requesting data and analysis of the impact of AWAs for a long, long time and it was never forthcoming from the government. In fact, the initial statistics took many, many hours of work to actually extract from the employment advocate at the time. But the previous government clearly had the ability to do a significant, detailed analysis of the impact of AWAs in respect of wages and conditions outcomes, jobs and productivity. But not a single analysis was done. Why do you think that might have been?

Ms Hammat—People might think that I am a cynical individual but I think it clearly did not serve their political interests to undertake that analysis and have it available in the public forum. I think they knew what that analysis would find.

CHAIR—Are there any final questions?

Senator FISHER—Yes. Can I ask one more?

CHAIR—If it is the last question.

Senator FISHER—Well, you offered. Thank you.

CHAIR—I hope it is not another question like 'do you support AWAs?' given that was the whole of the submission made by the union.

Senator FISHER—No, I am over that. They clearly do not.

CHAIR—No. Well, that was in their submission and the opening comments.

Ms Hammat—We are happy to clarify that if it needs clarification.

Senator FISHER—Have you provided the government with your views about the economic impact of the transitional bill?

Ms Hammat—Our input, I suppose, has really been discussions within the ACTU. Clearly we understand that the ACTU will seek to have those discussions with the government. So, certainly not myself directly, and the role of Unions WA has really been one of working through the peak union body in Australia.

Senator FISHER—Has the government asked you for your views?

Ms Hammat—Not as far as I am aware.

Senator FISHER—Thank you.

CHAIR—Thank you for your submission and your appearance before the committee today.

Committee adjourned at 12.34 pm