COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE

Reference: Building and construction industry inquiry

THURSDAY, 20 MAY 2004

MELBOURNE

BY AUTHORITY OF THE SENATE

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SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION

REFERENCES COMMITTEE

Thursday, 20 May 2004

Members: Senator George Campbell *(Chair)*, Senator Tierney *(Deputy Chair)*, Senators Barnett, Carr, Crossin and Stott Despoja

Substitute members: Senator Murray to replace Senator Stott Despoja for matters relating to the Workplace Relations portfolio

Senators Collins and Cook to replace Senators Carr and Crossin, respectively, for the committee's inquiry into the exposure draft of the Building and Construction Industry Improvement Bill 2003

Senator Johnston to replace Senator Barnett for the committee's inquiry into the exposure draft of the Building and Construction Industry Improvement Bill 2003

Participating members: Senators Abetz, Bartlett, Boswell, Brown, Buckland, Chapman, Cherry, Jacinta Collins, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fifield, Forshaw, Harradine, Harris, Humphries, Hutchins, Johnston, Knowles, Lees, Lightfoot, Ludwig, Mackay, Mason, McGauran, McLucas, Moore, Murphy, Nettle, O'Brien, Payne, Santoro, Sherry, Stephens, Watson and Webber

Senators in attendance: Senators George Campbell, Jacinta Collins, Cook, Johnston, Marshall, Murray, Tierney and Webber

Terms of reference for the inquiry:

To inquire into and report on:

(a) the provisions of the draft Building and Construction Industry Improvement Bill 2003 or any version thereof that the Government might subsequently introduce into Parliament;

(b) whether the draft bill or any subsequent bill is consistent with Australia's obligations under international labour law;

(c) the findings and recommendations of the Cole Royal Commission into the Building and Construction Commission, including an assessment of:

  (i) whether the building and construction industry is so unique that it requires industry-specific legislation, processes and procedures,

  (ii) the Government's response to the Cole Royal Commission, particularly with respect to occupational health and safety and the National Industry Building Code of Practice, and

  (iii) other relevant and related matters, including measures that would address:

    (A) the use of sham corporate structures to avoid legal obligations,

    (B) underpayment or non-payment of workers' entitlements, including superannuation,

    (C) security of payments issues, particularly for subcontractors,

    (D) evasion or underpayment of workers' compensation premiums, and

    (E) the evasion or underpayment of taxation;

(d) regulatory needs in workplace relations in Australia, including:

  (i) whether there is regulatory failure and is therefore a need for a new regulatory body, either industry-specific such as the proposed Australian Building and Construction Commissioner, or covering all industries,

  (ii) whether the function of any regulator could be added as a division to the Australian Industrial Relations Commission (AIRC), or should be a separate independent regulator along the lines of the Australian Competition and Consumer Commission or Australian Securities and Investments Commission, and

  (iii) whether workplace relations regulatory needs should be supported by additional AIRC conciliation and arbitration powers;

(e) the potential consequences and influence of political donations from registered organisations, corporations and individuals within the building and construction industry;

(f) mechanisms to address any organised or individual lawlessness or criminality in the building and construction industry, including any need for public disclosure (whistleblowing) provisions and enhanced criminal conspiracy provisions; and

(g) employment-related matters in the building and construction industry, including:

  (i) skill shortages and the adequacy of support for the apprenticeship system,

  (ii) the relevance, if any, of differences between wages and conditions of awards, individual agreements and enterprise bargaining agreements and their impact on labour practices, bargaining and labour relations in the industry, and

  (iii) the nature of independent contractors and labour hire in the industry and whether the definition of employee in workplace relations legislation is adequate to address reported illegal labour practices.

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Committee met at 8.33 a.m.

COONEY, Mr Barney, (Senate amicus)

COONEY, Mr Justin, Industrial Officer, Plumbing Division, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia,

OTTOBRE, Mr Nazzareno, President, Plumbing Division, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

SETCHES, Mr Earl Denis, State/Federal Secretary, Plumbing Division, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

CHAIR—I declare open this public hearing of the Senate Employment, Workplace Relations and Education References Committee. On 16 October 2003 the Senate referred to the committee an inquiry into the provisions of the exposure draft of the Building and Construction Industry Improvement Bill 2003 or any subsequent version of the bill which might be introduced into the parliament. The committee will consider, among other matters, whether the bill is consistent with international labour law, whether the circumstances of the building and construction industry are such that specific legislation is required for its regulation, the government's response to the Cole royal commission recommendations on occupational health and safety in the industry and the National Industry Building Code of Practice, the regulatory needs of workplace relations in the industry, the potential consequence and influence of political donations, mechanisms to address organised or individual lawlessness or criminality and a number of employment related matters.

The committee has invited submissions from all stakeholders in the industry and is conducting hearings in all states. Before we commence taking evidence today I wish to state for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to the evidence they give. Parliamentary privilege refers to special rights and immunities attached to the parliament or its members and those who appear before its committees. Parliament must discharge its functions without obstruction and people must be able to give evidence to its committees without fear of prosecution. Any act by any person which operates to the disadvantage of a witness resulting from evidence given before the Senate or any of its committees is treated as a breach of privilege.

I welcome any observers to this public hearing. I welcome our first witnesses from the CEPU. The committee prefers to take evidence in public. However, it will consider any request for all or part of the evidence to be given in camera. The committee has before it submission No. 36. Are there any changes or additions that you wish to make to the submission?

Mr Setches—No, there are not.

CHAIR—I now invite you to make a brief opening statement.

Mr Setches—Thank you very much for giving us the opportunity to present our case to you gentlemen and ladies today. First of all I wish to talk about the submission that we made to the committee earlier in the piece. That was put together by a number of people within our union.

We have used a lot of people outside our union, as in the International Labour Organisation, and some of the questions you might have for me I may not be the one to answer, but I will take them on notice. There is a gentleman in the auditorium who has given us a hand in putting this together, Mr Barney Cooney, who is a friend of the Senate. There is no doubt about that. Some questions on international labour law we would probably ask Barney to answer, if he would be kind enough to come to the front.

Senator COOK—I wonder, Mr Setches, whether we might ask him to come to the front now, because he is a former member of the Senate and it would be appropriate for us to acknowledge him as such, regardless of whether we have questions for him or not.

Mr Setches—He is more than welcome to sit up with us. Barney, if you would like to, sit up the front like a learned gentleman.

CHAIR—I thought he had taken up a little bit of shyness.

Mr B. Cooney—I thought about this and Earl raised this with me. I have some problems about giving evidence to former colleagues. Senator Johnston and others would understand this, I think. It is a bit like judges going back to the bar, and it is just a bit of a problem. But what I reckon I can do is just be a sort of friend of the Senate—Senate amicus. I have got great faith in the secretary, the president and the industrial officer. What I would not mind doing, if the Senate committee is happy with this, is responding to any sort of technical questions.

CHAIR—I think what we might do is allow Mr Setches to make his opening statement and then if there is anything that you can add at any stage you are free to do so.

Mr B. Cooney—I might prefer to go back and you can call me up.

Mr Setches—First of all, I think what has happened out of the royal commission and the Senate inquiry is that not much has been said about the elected officials of the union. All the officials are elected. The team that is running the Plumbing Division of the CEPU at the moment was elected five years ago and we are very accountable to our members. Our credibility is everything to the members. Like the Senate committee that is sitting before us today, if you do not get voted in and if your members do not vote for you, you do not keep your job. It is imperative to the Plumbing Division, and I suppose to all unions, that our credibility is held high among our members. I will talk about that later when it comes to the allegations that we use safety as an industrial instrument. We take offence to that. The industrial reality that has been portrayed in the royal commission and how it was put across we totally deny. The reality of the industrial system out there at the moment is that our division has 1,200 agreements that are certified and probably another 100 in the commission that are about to be certified. These are all pattern agreements which we stand by. I would like to talk about how we got those agreements. Accusations of coercion and intimidation that were brought out in the royal commission and in the Senate inquiry by some senators we flatly deny.

There is an industrial system out there at the moment and, to be blunt with the senators here today, fewer than five per cent of our agreements use that system; the rest are negotiated and employers sit down and sign the agreements. There is no issue. There is no protected action. I am a bit nervous, but the reality of saying that there is coercion and that the union stands over

employers we flatly deny. They are agreements and they are negotiated. We sit down with employer associations and, as they said to you—I will echo it again—out of the 1,200 agreements we have listed, fewer than five per cent of them have got to the stage where there has been an initiated bargaining period and protected action has been used. The reality of the industrial system is that we believe it is not broken. I would like to put a case forward to say that we would like to turn the clock back and change it back to the industrial system that applied 10 years ago. The Master Builders Association, the Master Plumbers Association and the National Electrical and Communications Association would like to say that the industrial system has broken down. We believe that the system is fine and we have 1,200 agreements registered in the commission at the moment. Also, it has been brought up that our union has been accused of ignoring Industrial Relations Commission orders. We flatly deny that.

Our union's history is that the union's leadership at the time was once fined $280,000 for ignoring the IRC. We were taken to court and there were section 127, section 166A and section 45D applications. At one time the union thought that we could take it on. History shows that the union was fined $280,000. So there is a system in place in our office that we certainly stand up and take notice if on the fax there is a 127 or a 166A from the Industrial Relations Commission. We have been accused of not accepting the umpire's decision in relation to the Industrial Relations Commission. We flatly deny that, and our history proves it. We are a craft union and a small union and we cannot afford to make mistakes or bad decisions that make us liable to be sued. Yesterday I was sitting here listening to the position stated by the Master Builders Association, indicating that the employers are too scared to stick their heads up out of the trench. We flatly deny that. If that is the case, I wish someone would tell all my employers that, because it would be pretty easy to run a union if the employers were terrified of the union. So, in relation to the 127s and 166As, I would like to flatly deny any accusation that our union does not take seriously the Industrial Relations Commission.

There have also been accusations that our industry is full of demarcations, and our union would like to flatly deny any. We believe that our union has come a long way. We certainly sit at the table and work out demarcations before they blow up. I cannot remember in the last five years that I have been working for the plumbers unions that we have had a demarcation that has gone for more than a day. Demarcations are ugly: it is worker against worker, and the unions certainly sit down and work that out. So the accusations in the royal commission that the industry is full of demarcations we flatly deny. The task force is out and about in the industry at the moment. We have no confidence in the task force. There was the interim building industry task force document entitled *Upholding the law—one year on: findings of the interim building task force*, which was handed to the minister and to cabinet. We have read this document and we have no confidence in any of the case studies. We would like them to be proved. We are looking forward to Nigel Hadgkiss sitting up here and hearing what he has to say.

What we have found with the task force is that a real case study, not a made-up one, is that of an apprentice in our industry who was approached by one Ponzio who had been approached by one of the members of the task force. He was offered $10 for every bit of information, hard copy or paperwork, that was given to the task force—to snoop and spy on the industry and to report back. He was told that if he gave that information, he would be given 'a big drink', and they were the words—'a big drink'. We take that to be not in accordance with community standards and not what a government organisation should be doing—that is, offering to apprentices. He was intimidated by an inspector when he was asked and it was out-of-work time. He was

intimidated, obviously coerced and, we would say, bribed. He was to be given money for any paperwork and offered 'a big drink' to give information. The apprentice fronted and rang the union. He spoke to his parents about this. We take this very seriously. It happened only recently.

We take seriously a government department and a task force doing this. We take the politics side of it: we know what their aim is, which is to chase the unions. The proof of the pudding is in the eating and what they come out with, which is to give this inspectorate power. That is frightening because at this point in time, without the power, they are using unlawful methods to try to get a list together to go to the minister and say that the industry is no good or needs to be changed and that they need more powers. We take this very seriously and I would hope that the senators will take that on board and that, when Nigel Hadgkiss sits in the same chair that I am sitting in now, the appropriate questions will be asked.

We sat with the apprentice and we said: 'This is very serious. The last thing we want is for you to be intimidated or put in any position on behalf of the union.' He said: 'No, it is unfair. It should never have happened. Why was I put in that situation? I have spoken to my family and my workmates and I firmly believe that it should be brought up.' It is a good sign, I believe, that a young apprentice has faith in his union to come to us for support. We told him that and I expect that the Senate committee will certainly bring the allegations I have brought forward to Nigel Hadgkiss. They are not allegations, because the young fellow certainly said that he would be happy to speak to anyone in relation to that. We discussed within our union that even if it was $10—we have heard that the first offer was $10 for any piece of paper, as in a mail-out that we would do, or our newsletters or anything of that sort—and then 'a big drink', where does it stop when people are offering incentives and bribes or whatever? Where does it stop? By someone thinking they can get away with getting information cheaply from an apprentice, who knows what lows this task force has sunken to in the field to collect their information. That should certainly be followed up by senators.

I sat in here yesterday and I have changed a lot of what I was going to say because I know I have only five minutes. There was a very good discussion in relation to the Sydney and Melbourne ratio of stoppages. I certainly stand by what Brian Boyd was saying. I believe our union would be eight to one on any industrial action that the union takes—and I am not talking about striking or walking off the site—on occupational health and safety and the policing of OH&S. We take it very seriously. The proof is in the minister's report. I have photocopied three documents that were given up and that you have in front of you, senators. This document is from the Workplace Relations Ministers Council and it is a document of public record.

First of all, table 4 lists fatalities. It shows that between 1998 and 2001 New South Wales had 44 deaths and Victoria had half that number—22. I believe this is so because the unions and, of late, the WorkCover inspectors have been very vigilant in Victoria. This is the minister's report. There is another number on the next sheet relating to insurance claims. It shows that there were almost three times more WorkCover claims in New South Wales than in Victoria. I have highlighted that. When you do the maths, you find that there is a little more work in New South Wales—not a great amount—for the year that the data are recorded. That is an amazing figure for the same construction industry and the same buildings. There is a difference of three times in the number of WorkCover claims. There is also a preamble from the ministers on another page, which I have highlighted, and I will read it out:

Victoria has a higher rate of days lost but also has relatively good OHS outcomes whilst NSW has low rate of days lost but has relatively poor OHS outcomes. One interpretation is that the attention to OHS through disputes is a sign of vigilance resulting in reduced claims.

This is from the government's report. This highlights that the plumbing division makes no excuses. We certainly work our hardest and do our best to keep our members safe. It is sick that the industry still quotes a major construction with a death on each site. That is totally unacceptable, we believe, in our division and we make no apologies. We are quite proud of the fact that the union, the shop stewards and the OH&S delegates work fearlessly hard to keep the industry safe. I am speaking of the OH&S work and talking about the credibility of the individuals.

We take enormous offence at the accusations that OH&S is used as an industrial arm. How I would put that in real terms is that we are elected officials. Our credibility is everything to our members. If you were to stand up—you could put yourselves in the same situation as this, being elected officials—and lie and make up scenarios about OH&S, your members would lose faith in you and think you were lying. You cannot lie about a crane that has dropped a load of concrete or a load of glass on a building site. You cannot lie and tell 40 or 50 men that a site is unsafe because the men know whether it is safe or not. We take great offence at being accused of using OH&S as an industrial arm, because if our members thought that we were lying to them we would lose our credibility. The accusations of OH&S being used as an industrial arm is something we totally and flatly reject. That is about all that I wanted to put at the moment. I am happy to take on board any questions.

Senator JOHNSTON—Mr Setches, you would not know what employers are telling the MBA, would you?

Mr Setches—Not if I was not sitting there I would not.

Senator JOHNSTON—The MBA say that they have a number of employers who say to them that they are unwilling to come along to this committee or to go to even the commission because of the retribution and the consequences that the union movement and the building industry unions will take and the actions that they will take against them. That is something that you have no evidence to contradict, I would have thought.

Mr Setches—Yes, I can contradict that. After the royal commission and the biased nature of the royal commission that came out, as we thought, I made the effort to contact a number of employers to have their say in this forum because the royal commission was very frightening for everyone. With its terms of terms of reference, virtually no-one would put their hand up to speak at that, the way that it was. I have noticed that a couple of our employers are on tomorrow and I could prove to you I rang a number of other employers and said, 'Would you by all means front up and honestly sit in front of the senators and give your true account of the industry?'

Senator JOHNSTON—How many were there that you rang?

Mr Setches—That would have been five or six.

Senator JOHNSTON—So five or six witnesses you at the CEPU have organised to come along here, and they are on the employers side.

Mr Setches—No, that is not correct. In discussions and in talking in the industry with employers—because we do talk with employers and we do talk about the industry—I have said to a couple of them that they should have their say and speak to the Senate committee: not coercing—just their say, to sit up and tell the truth.

Senator JOHNSTON—But Mr Setches, they did not come to you saying, 'Gee, we would love to go to the Senate inquiry on the building industry and give evidence.' You rang them and said, 'Look, why don't you go along?' Correct? That is your evidence, is it not?

Mr Setches—No. That is wrong, because one of them asked me—actually, two of them asked about how they would go about it. And I said: 'You have to look on the Net. It is Mr Carter who you ring.' So I deny that.

Senator JOHNSTON—So who are these people who are coming along that you have had discussions with? What are their names?

Mr Setches—When you say I have 'had discussions with', do you mean discussions—

Senator JOHNSTON—You said that you had discussions with them about coming along to the committee.

Mr Setches—I had discussions with them that they should have their say.

Senator JOHNSTON—And who are they?

Mr Setches—There are two who are coming tomorrow—that is, Contracts Plumbing and Collingwood Building Services.

Senator JOHNSTON—And how many contract plumbing companies are there in Melbourne—doing work in commercial construction in Melbourne?

Mr Setches—Contracts Plumbing?

Senator JOHNSTON—Yes. How many contractors are there?

Mr Setches—Contractors?

Senator JOHNSTON—Yes.

Mr Setches—There are 1,300.

Senator JOHNSTON—How many?

Mr Setches—There are 1,200 to 1,300 enterprise bargaining agreements with the union.

Senator JOHNSTON—And you have spoken to five.

Mr Setches—I did not ring them to say to come to this.

Senator JOHNSTON—No, but you have spoken to them—five of them.

Mr Setches—Yes.

Senator JOHNSTON—And you think that that indicates that there are no problems and employers are a bunch of happy campers.

Mr Setches—I think some may not be. I think you would have to regard them as individuals.

Senator JOHNSTON—I think you are right. Some may not be, and I want to tell you it is a very large number.

Mr Setches—I am not in the business to just totally keep employers happy.

Senator JOHNSTON—I am sure you are not.

Senator JACINTA COLLINS—Perhaps that is a matter of evidence, Chair.

Senator JOHNSTON—The fact is that the MBA says it has a large number of members who are too frightened to come forward for fear of retribution. You have not got a comment about that?

Mr Setches—I flatly deny that. There would be no retribution for anyone.

Senator JOHNSTON—But you just would not know what is going on between the MBA and its members, surely. You would not know.

Mr Setches—I do not understand. The MBA has got nothing to do with my members.

Senator JOHNSTON—Exactly.

Mr Setches—The employer associations that I associate with are the Master Plumbers Association, the Airconditioning Manufacturers Association and the Fire Contractors Association. We have no dealings with the Master Builders Association.

Senator JOHNSTON—But in your opening statement you mentioned the MBA and how you did not agree, or you said that you could not have said that it was true what they said yesterday about their membership not being willing, for fear of retribution, to come forward. You seemed to have an opinion on that. I am just asking you how on earth you would have an opinion.

CHAIR—I think the point that Mr Setches is making, Senator Johnston, is that as far as his union is concerned there will be no retribution against any employer for appearing before this Senate committee, and he has given that absolute assurance.

Mr Setches—Senator, to clarify that, I do not deal with the MBA directly, but on building sites with the plumbing contractors' work. They are members of the MBA. So to clarify that, I do not deal with the MBA.

Senator JOHNSTON—Okay. Do you know Mr Paddy McCruddin?

Mr Setches—I certainly do.

Senator JOHNSTON—Who is Mr McCruddin?

Mr Setches—He is an organiser from the plumbing division in Victoria.

Senator JOHNSTON—He is in the plumbing division. And what happened to him last year? Was he not taken to hospital because he was very badly bashed during a union meeting?

Mr Setches—There has been no proof of anyone being bashed.

Senator JOHNSTON—Were you at the meeting?

Mr Setches—I was at the Lorne Hotel.

Senator JOHNSTON—Tell us what happened.

Mr Setches—I will tell you what happened. There have been these allegations that have been put forward with no evidence.

Senator JOHNSTON—You tell us what happened. This is your chance to tell us what happened.

CHAIR—You asked him the question.

Senator JOHNSTON—He is talking about the allegations. Tell us what happened.

CHAIR—Let him answer the question.

Senator JOHNSTON—It is a simple question.

Senator JACINTA COLLINS—I raise a point of order, Chair: I would ask Senator Johnston to stop badgering this witness. It is appalling.

CHAIR—I do not need your help, Senator.

Senator JACINTA COLLINS—I am not offering it, Chair.

CHAIR—I had already told Senator Johnston to let the witness answer the question.

Mr Setches—There have been allegations with no evidence put forward. I am very happy; we have been waiting for this to come up because we certainly, as a union, are very angry the way that this has been brought out in the arena to slander our union. Our union, and the president is sitting beside me, have union rules which we have to uphold. The allegations of people being bashed are totally untrue. I think there are people with other agendas who take this out into the public to get yards out of this, but there was no-one bashed. Paddy was not bashed. Yes, we are not denying that someone hit their head and went and had stitches in their head and a fall, but saying that someone was bashed in that allegation, we flatly deny that. There is no evidence of that and the police have no evidence and have not brought forward anyone with this. There is no member who has come to a union to lay charges or has complained, whatever it is. So, as far as we are concerned, this is a beat-up. It has not fallen out of the sky, but people certainly do not mind changing the truth to advance their own agendas.

Senator JOHNSTON—You said that the man sustained an injury and had some stitches. How many stitches?

Mr Setches—I would not know. I do not know.

Senator JOHNSTON—How do you know he had stitches?

Mr Setches—Because I spoke to him the next day.

Senator JOHNSTON—What? He had a big lump on his head, or what?

Mr Setches—No. It was the back of his head—stitches. He had three or four stitches in the back of the head.

Senator JOHNSTON—And you saw those stitches?

Mr Setches—Yes.

Senator JOHNSTON—Were you present when he sustained that injury?

Mr Setches—I was at the resort.

Senator JOHNSTON—At the resort?

Mr Setches—Yes.

Senator JOHNSTON—Which resort?

Mr Setches—The Lorne, Cumberland, or the Cumberland Lorne.

Senator JOHNSTON—You saw what happened?

Mr Setches—I saw Paddy fall over and hit the back of his head.

Senator JOHNSTON—Okay. Tell us exactly what happened.

Mr Setches—Well, Paddy fell back and hit his head.

Senator JOHNSTON—Why did he fall back?

Mr Setches—He slipped up.

Senator JOHNSTON—He was just standing there and he slipped up, slipped on the pavement?

Mr Setches—It is not the pavement. It is inside, on the corner of the bar. Senator, I am here to answer questions on behalf of the union and anything to do with the union. Now, what people do in their private lives and what happens in incidents, I do not believe—this is my opinion and I am happy to answer your questions—has anything to do with union business. It has nothing to do with the plumbing division of the union. We would uphold any rules of the union if there was a complaint.

Senator JOHNSTON—What were you doing there with Mr McCruddin on that night?

Mr Setches—We had finished a meal. We had a training course during the day.

Senator JOHNSTON—At that resort?

Mr Setches—Yes. We had a training course during the day. We do training for our officials, especially to keep up the first aid and all the different changes to the Workplace Relations Act, so that they work within the law. At night we had a meal and then people went their own way and did different things. The next day there was another course.

Senator JOHNSTON—Tell me exactly what you saw with respect to Mr McCruddin and how he fell over and hit his head. He was pushed, was he not?

Mr Setches—I would not say he was pushed.

Senator JOHNSTON—You would not say he was pushed?

Mr Setches—No, I would not say he was pushed.

Senator JOHNSTON—You would not say it, but tell us what happened. How did he come to fall over and crack his head?

Senator MURRAY—Did someone nudge him, perhaps?

Mr Setches—It was a slip. Yes.

Senator JOHNSTON—So no-one made any contact with him. He just fell over.

Mr Setches—Well, you could say 'nudge', as the other senator said.

Senator JOHNSTON—There was a nudge.

Mr Setches—And he slipped.

Senator JOHNSTON—A nudge and a slip.

Mr Setches—What I would say to you—

Senator JOHNSTON—Would you call it a push?

Mr Setches—More of a nudge.

Senator JOHNSTON—Was it a big nudge?

Mr Setches—No. The reason that he hit his head was a slip. He did slip and he hit his head.

Senator JOHNSTON—But he was nudged before he slipped.

Mr Setches—He came back after having the stitches. He came back to the resort and partook of the union business and life was perfectly normal.

Senator JOHNSTON—So the person who nudged him was a CEPU member?

Mr Setches—Yes.

Senator JOHNSTON—Right. And it was during a conference at the resort, while you were standing around, that he got a nudging that caused him to fall over and he required stitches. That is your story.

Senator MURRAY—That was quite a nudge.

Mr Setches—I do not think the nudge was the cause—it was the slip—of him hitting his head. We can talk about this all the time, but it means a lot to our plumbing division in the union to get through to Senator Murray especially that we flatly deny—totally, utterly—anything to do with violence or intimidation in the workplace.

Senator JOHNSTON—It is a credibility issue, Mr Setches. When you say that, having described what happened to Mr McCruddin, it is a credibility issue. Thank you, Chair. I have no further questions.

Senator MURRAY—Excuse me for laughing, Mr Setches, but I have been in a lot of nudges myself.

Senator JOHNSTON—How many stitches?

Senator MURRAY—I do not look like this by accident! Mr Setches, turning back to your opening statement and your submission, there is a point to Senator Johnston's questioning which I think we should explore. If I look at the three of you—I do not know Mr Ottobre—but if Mr Cooney is the son of Barney Cooney, he starts way out in front; I automatically assume that he is a good bloke. Just on the face of things, I would assume you to be a credible witness. You do not strike me as a bad bloke. When I think back yesterday to the MBA witness and I think of Mr Welch and his offsider—and I cannot describe her as a good bloke—they seemed to me to be credible witnesses. You can see what we are faced with here. We are faced with one set of evidence and stories, attitudes and assertions from one set of credible witnesses and then a different sector from a different set of credible witnesses. Somehow we have to find our way through this. When you are finding your way through it, there are two routes you can take: one is to deal with the government legislation as it stands and ask does this or does this not assist with your understanding of the issues, and the other is to say that there is plainly something wrong.

Not everything Mr Cole says is wrong, not everything the employers say is wrong, and not everything the union says is wrong, so there is plainly an issue, and the question is how do you deal with it. I want to take you back to the basics. If you could change the system so that you could make the work force more contented and work sites more productive and you could make the building and construction industry more dynamic, more progressive and with a better future than it perhaps has now, and one of the mechanisms is the Workplace Relations Act, what would you do? What is your reaction?

Mr Setches—I believe—and I have been working in the industry for about 21 years now, including 17 years on the tools in the industry—the industry is progressively moving in the right direction. I firmly believe that, compared to the work practices 20 years ago, each year—as highlighted yesterday when we done the walk on the building site where the project managers and the developers said that we are getting better and better—our systems are getting safer. I think that for the unions, OH&S agencies, government agencies and employers it means that the industry is moving better and better in the way of productivity and safety. So how I can change that—are you talking industrially or for the whole industry as a whole?

Senator MURRAY—The only thing that we as legislators can deal with is the act, so I am talking about the act.

Mr Setches—I think that what is hard is that successive governments have dealt with different legislation in the way of enterprise bargaining and the award system. I think if it would go back to a normal system where there was no second-class worker—if you are in the field, if you are a carpenter, or a plumber, or a sprinkler fitter, or a roofer or a drainer—when once there was an industry standard of pay and the relativity was lifted for all, instead of the position of some employees having more industrial muscle and, how can I say, being able to get the men into a room. I did highlight, or I think I did, that under the industrial system there are LK agreements and LJ agreements and union agreements.

Senator MURRAY—Explain it to me, if I can just interrupt you, so that I can keep your train of thought. Who would you regard as the second-class worker: the person under the award?

Mr Setches—Most definitely, because none of the wages and rates of pay in all that I have seen—and there are the non-union agreements that on the Met 2 are certified under the LK

system and are not negotiated by the union—have superior conditions to the union negotiated agreements. I say to you that $23 an hour is not outrageous for a plumber. If any of you call out a plumber in the housing industry, you are not going to get someone to come out and do any work for under $60 or $70 an hour, and that is a fact. We are proud of our rates of pay that we fight for and the conditions on the jobs, but it is by no means totally excessive for plumbers on the EBA rate to be paid $23 or $24 an hour. But some of the industry standards in the LK agreements are much less than that. There are some plumbers who are on the award, and then there are the sham subcontractors—this has been brought up; I have read that many submissions that I do not want to go over old ground—who claim they are a business. They have their four-wheel drive and their missus has a four-wheel drive, but they do all their work for one other plumber or one builder and claim that they are quite a legitimate business. I am sure that the taxation department knows, from how it has all been highlighted.

Senator MURRAY—Let me stop you there because the Chair does not give me much time; we do not have much time. The system essentially allows for there to be a blue. The system says, to use the words used yesterday, there can be economic coercion. When it comes to negotiating the EBA, you can apply as much pressure as you like to maximise the wages and conditions, but once you reach the agreement, you should hold to the agreement. If there is one thing that comes through in the evidence, it is that agreements are not held to. It is not the issue of pushing wages and conditions to maximise your return. That is what the businessman does to maximise his return, and that is what the union does to maximise their returns. The system is designed for that. The problem from the evidence we are getting is that agreements are not being abided by and held to, once agreed. What do you say to that?

Mr Setches—Senator, you touched on getting to the blue. I believe that it is hard now. I think the legislation as it has been put together, even though it is working—and I have got 1,200 or 1,300 agreements—means that there is only a window of opportunity for us as a union every three years to get protected action, to take lawful industrial action. Even then, even within a week of having industrial action, it can be terminated because you are not bargaining fairly. There are all these hurdles to get over this so-called, I have heard, industrial bastardry. The hurdles to get through to get the protected action are being put in the way, and it can be taken away. The employers have their rights too; they lock out. Once a family has been denied their wages to feed the family when there is a lock-out, they have their rights, if there are bans put on them. They can lock their work force out. On the first issue you raised then, it is very hard—and it is three years of no-strike action to get to an agreement. Then when we get to a position where we can take protected action, which is lawfully set out by the legislature, it is very hard to keep the protected action because employers can automatically attack it and have it taken away.

The second thing you were saying was: do we hold to our agreements? I can say that I challenge the Senate's task force, the industry, everyone else out there and any employers—we are proud of our agreements; we sign off on our agreements and there are no extra claims clauses in there—to find anyone who says that we have gone back to the well and asked for better wages and conditions after our agreement has been signed. Yesterday it was brought out that there was a claim for long service leave half-way through an agreement.

The truth about that is—and I was sitting in the back thinking that I wished I could have my say—there were discussions about long service leave. There was no financial impact in the life of that agreement. It was negotiated in the next agreement—1.5 per cent for long service leave.

So the life of that last agreement we negotiated, the reason that the negotiations were brought on was that our representatives on the long service leave board were told by the financial people who oversee the hundreds of millions that the money is going backwards because of the terrorism threat and Madrid and whatever has happened. The financial institutions which oversee the money that is invested are going backwards. We cannot sustain it how it is so we must discuss it—the only right thing to do is to have discussions. The MBA said that there was industrial action taken and there was a change midway, but there was not. I would like that to be stated on the record.

The life of the next agreement was when the financial 1.5 per cent levy came in, not in the life of the agreement that was negotiated. So I believe that it was smart to sit out a year or two in advance to discuss it with the industry. So, if the members think and the certified agreements say that they have long service leave and the financial institutions say that they are under pressure and that the money is not there any more, I think it is proper that discussions take place. So it is a fallacy that industrial action was taken, we broke our agreements and the employers were hit with an extra charge over the life of the agreement—that is wrong. With long service leave, it has been free for eight years for the employers because there had been money there. If the money comes back, I am sure that the employers will sit down with the unions for the next agreement and say that there is no need for input if there is enough money there. But we have to follow what the accountants and the institutions say if there is no money for the members. So, I am sorry, Senator, but I challenge that; we stand by agreements and we do not go back and ask anyone.

Senator COOK—Mr Setches, I think I saw a photo of you or a poster featuring your likeness on a building site yesterday and someone had written under it, reminiscent of that classic Australian comedy *The Castle*'s opening monologue, 'I am Darryl Kerrigan and this is my story.' Was that you?

Mr Setches—Tell them they are dreaming. Yes, that is me. It was a bad photo.

Senator COOK—It was a bad photo, but you are not here making a submission in which you are asking us to have regard to the vibe of the Constitution or Mabo, but mainly the vibe, are you?

Mr Setches—No, I am not.

Senator COOK—Can I just go to your submission, which I might say, takes us into an area that we have not been taken to before and is, I think, a very useful addition to the body of evidence that we have before us. If I can go to page 6 of your submission, it is the second paragraph from the top and I just want to quote some of this to you:

> According to the ATO, the building and construction industry employs over 700,000 people. From this 700,000 the Cole report found 392 instances of civil misdemeanours with thirty-one people accused of criminal behaviour. These figures mean that about 99.4 per cent of those employed in the industry are *not* lawless. This hardly justifies the accusation that lawlessness is prevalent in the industry.

There is a reference there to a footnote, and the footnote says that '99.94 is Don Bradman's test average'.

Mr Setches—Senator, I commend you. We were wondering whether anyone would pick that up. That was a bit of a test to see if the Senators were awake, so I commend you on that. We did put a little joke in there.

Senator COOK—We are awake, but the most recent report that was tabled in the federal parliament by the leader of the Interim Building Industry Taskforce has the figure for the population of the industry at something like 143,000 people. Of those mentioned in the Cole royal commission, the 31 people accused of criminal behaviour, are you able to tell us how many were associated in any way with your union?

Mr Setches—None.

Senator COOK—None. Are you able to tell us—you may not be in a position to, and if you are not, that is fine—whether any one of those 31 people mentioned in the Cole royal commission and accused of criminal behaviour have been charged?

Mr Setches—I do not think so, no.

Senator COOK—Okay. So that stands as an accusation from which it would seem no legal proceedings have flowed.

Mr Setches—Correct.

Senator COOK—One of the points you make in your submission is the capacity to smear people and organisations by making allegations of lawlessness from which no criminal proceedings or other proceedings flow, but nonetheless the allegation remains out there, and their reputation is tainted.

Mr Setches—True.

Senator COOK—True. And that is not a very nice practice, is it?

Mr Setches—No, it is not.

Senator COOK—When it is officially sanctioned, it is a very unsavoury practice.

Mr Setches—That is right.

Senator COOK—The other part of your submission that I think is very interesting is on page 8—and I will be very quick because I understand that the chairman has some questions for you as well. At the bottom of that page, after a long discussion commencing on page 7 under the heading in clause 13 of your submission, 'Rule of Law', you quote the minister in references to various distinguished judges—in fact going back to 1610 and the English lord Chief Justice Coke. I see the hand of the former Senator Barney Cooney in that reference.

Mr Setches—I would like to say that that is mine, by the way.

Senator COOK—Oh, it is yours?

Mr Setches—I would like to say it, but I cannot, because it is not.

Senator COOK—I did not want to assume that it was not yours. Here comes the key point of that discussion. There is all the foregoing and then you say:

This mistakenly infers that whatever gets through parliament accords to the rule of law. This is not so.

Then you go on to refer to a number of areas where that may not apply. It might be an appropriate time, if it is Mr Cooney as he now is and if he has written that, to give a bit more detail on that comment. It is not for the parliament at the end of the day to assert that this is the rule of law. The obvious implication is that we have, under the separation of powers in our democracy, a judiciary that interprets the law and makes law, as well as the legislature. Is that the implication here?

Mr Setches—That is right.

Senator COOK—Because you then go on and talk about how, even in the dark days of World War Internet, the assertion of the need to uphold democratic institutions and democratic decision making is what separates a democracy from a totalitarian state.

Mr Setches—That is true.

Senator COOK—But then your submission unfolds and goes into headings like 'The Bill & Pattern Bargaining', 'Collective Bargaining & International Principles', 'Collective Bargaining & Domestic Legislation', 'Right to Strike Provisions', 'Application to the AIRC for Secret Ballot', 'Subsequent Periods of Industrial Action' and so forth. All of those are, for the purpose of our inquiry, a learned discussion of those principles. To that extent, they contribute considerably to the body of evidence, as I said earlier. But then on page 16 under clause 16, you enter into a discussion of 'Oppressive Measures Introduced By Bill—the role of the ABC Commissioner', in which you describe in your submission that the powers sought in this legislation are in fact a travesty of the democratic rights—I am putting this in summary—that we Australians enjoy.

Mr Setches—That is right.

Senator COOK—That the powers of the ABC Commissioner and the ABC inspector, by imposing on construction workers lesser rights than for other workers, make a different category of workers and, as a consequence, damage their standing in society. That is the essence of that.

Mr Setches—That is right. It creates an apartheid type system—not equal for all.

Senator COOK—In fact there is a discussion under the heading 'Industrial Apartheid' which appears on page 21.

Mr Setches—Yes, that is right.

Senator COOK—There is also discussion of how these bills reverse the onus of proof.

Mr Setches—That is right.

Senator COOK—There is also discussion of how these bills introduce retrospective application of legislation, something that the Senate has, for a long time, refused to do, but what these bills propose to do.

Mr Setches—That is right.

Senator COOK—There is a discussion of the differential treatment on right of entry that these bills would impose on unions as compared to other actors in society that have an entitlement to enter a workplace.

Mr Setches—Yes.

Senator COOK—That goes to the industrial apartheid type of argument, but it goes also to the argument about the lower standards of one group that are different from the common standards applied. There is a discussion here that the police should be trusted and relied upon. Earlier we had this issue about the Lorne Hotel. Was that event, whatever it was, an industrial matter?

Mr Setches—No, we were doing training. It was training.

Senator COOK—Did it occur during working hours?

Mr Setches—No.

Senator COOK—It does not matter whether it did or not, actually. But it was not an industrial matter. If there was an assault and the allegation is left pregnant in the air that perhaps there might have been—some of the scepticism about your explanation suggests that there is a lack of acceptance of the explanation that you have made—but that was not an industrial matter, was it?

Mr Setches—No.

Senator COOK—It is not capable of being resolved by these bills that are before us now, is it?

Mr Setches—Nothing to do with these bills.

Senator COOK—No. Was it reported to the police?

Mr Setches—Yes. The police were involved.

Senator COOK—The police investigated it?

Mr Setches—Yes.

Senator COOK—Did they take witnesses' statements?

Mr Setches—They interviewed people, yes.

Senator COOK—And did they, as guardians of the law, lay any charges?

Mr Setches—No, they did not.

Senator COOK—They did not. Did we have operating the interim building industry task force? Did they investigate it?

Mr Setches—No. The interesting thing is that the building industry task force has not spoken to anyone at the plumbers union, no-one at all, in relation to that, but they have managed to give to the minister a case study. We believe the words 'case study' should mean an actual, factual account of an incident or of a time. Nigel Hadgkiss gave to the minister, the cabinet and the Prime Minister an argument to get funding for more money for the task force case study in relation to the matter.

CHAIR—Can you identify what you are reading from, Mr Setches?

Mr Setches—Yes. This is 'Upholding the law: one year on'.

Senator COOK—That is the report.

Mr Setches—Yes. That was the report that was handed to the minister, and the task force have done a case study on it, apparently, but forgot to ask any questions of anyone. So they actually say their case study is a newspaper article in the *Herald Sun*, and, you know, I do not even have to comment on that.

Senator COOK—I do not have a copy of the document that you are reading from but I am aware of that document. I read it closely on a previous occasion. I do not think I need it now because it is not all that important. But that document is peppered with alleged case studies which outline assertions, none of which are backed by any evidence, and you are saying that in the case of this issue, of which you have knowledge, your union was not approached to verify any of the allegations.

Mr Setches—Not at all.

Senator COOK—And that the reference for those allegations is a report in the tabloid, the *Herald Sun*.

Mr Setches—Yes.

Senator COOK—Do you happen to know whether the individual concerned was approached by the task force?

Mr Setches—No, he was not.

Senator COOK—Do you happen to know—and you may not know—whether the police were approached by the task force?

Mr Setches—I would not know if the police were.

Senator COOK—That is reasonable. So this is tabled in parliament as an example of misbehaviour, lawlessness, as if it were fact.

Mr Setches—Yes.

Senator COOK—But the relevant actors in this event were not interviewed by the people making these allegations.

Mr Setches—That is true and correct.

Senator COOK—The question of credibility has been raised this morning. How do you rank credibility of that type?

Mr Setches—We see no credibility whatsoever in this entire document. When at first hand the union and individuals are accused of this and have never even been interviewed or spoken to, we have absolutely no credibility. Any of these—and there are a number of these case studies that you read in it—are laughable, totally laughable. So we have no confidence whatsoever in the government's attack dog, the task force on unions. We have no confidence in it whatsoever, so the credibility—it has none. For us to say that this was a case study that was given to the minister and to cabinet to get another $9 million or $14 million, or whatever it was, is laughable, because no-one approached us.

Senator COOK—In your submission, you suggest to us—and 'suggest' is the correct word because it does not appear to me to be at the level of a recommendation but more of a suggestion—that we invite His Honour Terence Cole to come before our inquiry.

Mr Setches—Yes.

Senator COOK—And justify his report.

Mr Setches—Yes.

Senator COOK—I have not given thought to whether that is an appropriate step to take, but why do you think we should do that?

Mr Setches—I think the royal commission in its terms of reference and the way it was put together was extremely biased against the union, and to put Cole in the position where he did not have the control of the day-to-day running and for him to be answering questions about democracy from the unions and from solicitors and everyone else would be not only true but fair because we believe that it was a complete and utter attack on the unions from the government and all the solicitors and everyone involved. You can see the way they even portrayed that there is so much—300-odd instances—lawlessness. I have worked in the industry for 20 years and I have never seen any of this lawlessness or what they are saying. Now walking across the road

can be defined as jaywalking and taping with a video recorder is lawlessness. When individuals are in the union and they go on-site and do not give 24 hours notice, yes, that is lawlessness, but none of this is serious, like extortion. One of these case studies is saying that the unions extort hundreds of thousands of dollars out of builders. These are just totally and utterly fabricated lies. If it is true, why is something not happening about it? Why are the police not doing something about it? In this document that we are talking about 'one year on', Nigel Hadgkiss says that the unions are no good, the workers are no good, the employers are no good, the state governments are no good; no-one is any good, except for the task force. Maybe we should leave the $24-billion a year industry for Nigel to run because no-one else is any good. We totally and utterly reject any of that, and we would like to see proof of any of these case studies.

CHAIR—That might be a good point at which to leave this session on Mr Setches. Thank you.

[9.34 a.m.]

KINGHAM, Mr Martin, State Secretary, Construction, Forestry, Mining and Energy Union

WATSON, Mr Tommy, State Secretary, Construction, Forestry, Mining and Energy Union—Federated Engine Drivers and Firemen's Association

CHAIR—Welcome. The committee prefers all evidence to be given in public. However, it will consider any request for all or part of your evidence to be given in camera. The committee has before it submissions Nos 121 and 123. Are there any changes or additions that you would like to make to those submissions?

Mr Kingham—No.

CHAIR—I now invite you to make a brief opening statement.

Mr Kingham—Before I make an opening statement I would like to make a brief observation about the hearings yesterday. I sat through Brian Boyd's submission and, at about 11 o'clock, I had to make a choice about whether or not to stay here and listen to Brian Welsh and the MBA's submission or go to the dentist and have a molar extracted. I chose to go to the dentist on the basis that it would be less painful and that the dentist would administer an anaesthetic. Speaking to Brian afterwards, I think I made the right decision not to come. But, seriously, in relation to this Senate inquiry, and on behalf of my members who work in the construction industry, I believe that a gross injustice has been done to our industry and to the people who belong to it.

I am disappointed that yesterday Brian Welsh continued on the political theme of trying to talk down our industry for political purposes. If there were a window here for you to look out of, you would see cranes moving all around, you would see work being done, you would see buildings going up and you would see a boom in process. We are proud of the work that goes on and we are proud that it is a well-regulated industry. We are not shy about that fact or about the fact that we are able to negotiate common conditions in a hostile environment in respect of wages and conditions, health and safety regimes et cetera to make an inherently unsafe industry as safe as it possibly can be.

We are not shy about the fact that we are out there seeking to have our members engaged appropriately as PAYE employees receiving annual leave, sick pay, rostered days off and reasonable money. We do not like the old days—cash in hand and bodgie subcontractor arrangements. People earning money and paying taxes like everybody else is what is going on outside that window. We are also proud of the fact that we were able to negotiate those conditions and those standards with the Master Builders Association of Victoria in our last renewal without time lost in the industry.

We have had one meeting with our members to endorse our claim, and we negotiated around the table and had another meeting of our members where they accepted the settlement that was negotiated through that process. Not one day was lost as a result of industrial action to pursue

standards and conditions that affect approximately 50,000 people currently. Almost 3,000 companies are involved in the process of signing those agreements—EBAs that contain the total provisions of the VBIA that was discussed in here this morning, certified before the commission and that is legally enforceable in accordance with the Workplace Relations Act.

Those are some of the facts that the royal commission and, I believe, our political opponents in the federal government choose to ignore. We are proud that we are a militant union. That is how we achieved those conditions. We are proud that we fight for better outcomes for our members. We have to fight in the system. The systems change over the years. Industrial legislation comes and goes. We do not necessarily have that much of a part or an influence in the shaping of various industrial relations laws, but we have to make the best effort within whatever those systems are to represent our members.

We are there to attend dispute board hearings; we attend commission hearings; we abide by the umpire's decision; we fight hard, but we fight fair and we cop that umpire's decision when we have to, despite unsubstantiated claims by our political opponents and by the MBA. We participate in a whole range of bipartite and tripartite committees—the Victorian Building Industry Agreement Consultative Committee, discussions between the government and the unions. Amongst those discussions, outcomes have included the memorandum of understanding in relation to the Commonwealth Games projects, and ongoing monitoring arrangements to make sure that all parties—employers, the unions and the government—are able to deliver on their commitments in relation to the construction projects that will be used for the games. The unions have been involved in WorkCover reviews. The Occupational Health and Safety Review Committee is currently looking at the Health and Safety Act and legislation in Victoria. The union is involved in many other peak bodies and industry issues. In the vast majority of them we are involved jointly with employers in this state.

We probably have the most pragmatic Master Builders Association in the country in terms of its on-the-ground activities and its very active participation in patent bargaining. It charges its members a significant fee for the pleasure. We will continue to come here and run the rhetoric, run the line completely different to what they are doing in the field. We share committees with them, superannuation, redundancy funds, long service leave et cetera. We are a legitimate participant in all those forums and bodies—just as legitimate as employer representatives. We do not believe that the process that led to this bill was a fair one.

We think that the royal commission was biased against the unions from the start to the finish—something with which I think most people in Australia would agree. We have lots of examples of that in our submission, but I will not go into them. The bill that this inquiry is about essentially states that unions are not legitimate players, that we should not be involved, that we should be marginalised and taken out of the equation. The bill will make it impossible for members to have common conditions. It would make it illegal to collectively bargain and it would make it nearly impossible for union officials even to visit members, or potential members, in the workplace.

If the union steps out of line, this bill contains provisions to sue them, to strip them of their assets without the employer even having to foot the bill for any of those legal battles. That would cause incredible disruption in our industry. At the moment, despite the propaganda, our industry is actually free from major disruption. Of course we have day-to-day disputes around the place at

the site level about conditions and about employers honouring their agreements in relation to safety and so on. They are all dealt with at the site level. They are dealt with by shop stewards, employers, union officials, company senior representatives, dispute boards, arbitration commissions and through consultative procedures. Plenty of devices are available to be used and they are used on a regular basis.

If the parties resolve the matters between them, this bill will provide for somebody else to come along and to pursue damages—not on behalf of the builder or the so-called aggrieved party—through the use of government revenue to issue fines and penalties against us. So there is outside interference in an industry that is actually productive. Statistics are available in the submission. There are statistics in my submission that compare per square metre costs and a whole range of commercial construction costs between Melbourne and Sydney.

You will find that the hard facts actually do not represent the propaganda that has been waged against us. Before winding up my opening remarks I want to make a quick reference to the interim task force. Obviously I share the views put forward recently by Al Setches that this is a travesty. Taxpayers' money is being used basically to fund a propaganda arm of the government. This is an investigative body that had hundreds of so-called adverse findings and all sorts of things referred to it by the royal commission. Following its own investigations it decided that there are no grounds for any legal action to be pursued against anybody, including the contents of the controversial red book—the so-called secret volumes.

There have been no prosecutions. Basically they are out there to pump out unbiased and unsubstantiated allegations and to continue the work of the royal commission. I referred earlier to an interim report, which is certainly a piece of work. It is certainly very clever but it does not contain one shred of evidence to back up any of its claims. I am sure that plenty of betting people in this room would be happy to put a lot of money on the fact that nothing in that interim report will ever result in a prosecution. It contains propaganda and lies. Taxpayers' money is being used to generate it and continue it.

CHAIR—Do you want to add anything, Mr Watson?

Mr Watson—The CFMEU-FEDFA Victoria supports the submissions that have already made by the CFMEU. The submissions that we make will not seek to duplicate information or the contents of any of the other submissions. Rather, we will concentrate on two industries—the mobile crane hire industry and the concrete pump industry. The mobile crane hire industry is a service industry that operates in almost all industries and areas throughout Australia. The mobile crane industry requires crane drivers, riggers, dock men, operators and spotters to be available to service all industries at short notice in case of emergencies and industry breakdowns and for maintenance work 24 hours a day and 365 days a year.

The mobile crane industry operates under the mobile crane hire award and the only union party to it is the CFMEU. Some of the industries in which the mobile crane industry operates include the building industry, demolition, heavy construction, engineering, mining, petrochemical, aluminium, road transport, emergency services and the housing industry. The crane industry works in just about every industry in this country. The CFMEU submits that this proposed bill would adversely affect both the mobile crane hire industry and the concrete pump industry. To our knowledge, no consideration was given by the Cole royal commission to work

performed in the general industry outside the building and construction industry by members of the CFMEU-FEDFA.

To our knowledge the private individual performance of these businesses performing such work was never considered. There were no adverse findings or criticisms made by the royal commission in respect of such work. Over recent years the CFMEU-FEDFA Victoria has been highly active in developing new ways of improving health and safety conditions for workers engaged in the industry. At the moment we have a crane consultative committee that was established at the instigation of the FEDFA. That committee comprises representatives from the Victorian department of labour, employers, crane safety, FEDFA and other relevant industry groups.

We also introduced a code of practice for tilt-up panels and a working party dealt with the safe operation of concrete pumps, which led to a standard being established in Australia. When the Victorian government broke up the crane consultative committee, mobile crane and concrete pump inspectors were discontinued. Since then, however, negotiations between the Victorian Crane Association, the CFMEU-FEDFA Victoria and the consultative committee have been re-established. The committee meets regularly—on a monthly basis—with the CFMEU, the Crane Industry Council, the Crane Industry Association and CraneSafe.

We also highlighted the fact that there had been electrocutions of crane workers due to the crane load coming into contact with powerlines. It is the most common cause of death in the mobile crane industry throughout the world. In 1999, following two recent crane hire industry fatalities around Melbourne, CFMEU-FEDFA Victoria instigated a system known as the 'no go zone', which was adopted by the Victorian WorkSafe and Safety Committee and the chief electrical inspector, and it is now an industry standard. I have some documents available if anybody would like to have a look at these no go zones.

Since we introduced those zones there have been no fatalities in Victoria. We also developed free start checklists, annual mobile crane safety inspections and an industry standard for bridge beam erections. Following a fatality on site during the erection of a bridge beam and reports of several near misses, CFMEU-FEDFA Victoria instigated a working party consisting of representatives from the CFMEU, engineers, contractors, crane hire companies, transport companies and concrete beam manufacturers. VicRoads established an industry standard for the safe erection of large concrete beams over roads and rail lines. That industry standard, which has now been completed, is now available in published form.

I would like to refer to a number of other issues. The Cole royal commission was so biased against the union that it was beyond a joke. Take, for example, my case. The Cole royal commission made four adverse findings against me. Two adverse findings related to breaches of the Workplace Relations Act and two adverse findings related to perverting the course of justice, which is a very serious criminal threat. I attended a meeting of Grocon employees who went on strike. The royal commission found that I had perverted the course of justice. Anybody in this country or in the world could go to a computer, go onto the Internet, locate the royal commission and my name will come up.

I have two serious charges hanging over my head. If you did not know anything about the proceedings of the royal commission, you would assume that I was guilty. Yet at no time did I

give evidence to the royal commission and at no time was I in the witness box. At no time was I asked about my side of the story and at no time did I give any information to the royal commission. However, I have four adverse findings against me. Two of them have been referred to the Director of Public Prosecutions. That is not the rule of law. That would not happen in any other system that I know of in this country. I have adverse findings against me and I did not even go into the witness box.

I was not interviewed by an inspector and I was not asked to make a statement. At no time did anybody ask me for my side of the story, yet I have adverse findings against me. That is not the rule of law. That royal commission was very biased against the unions. That finding was exactly what the federal government asked for and that is what it got. I was also present yesterday and I listened to the evidence that was given by the MBA. The MBA said that it had 5,000 members—4,000 in the cottage industry and 1,000 in the commercial industry. As Martin has already said, we have registered about 3,000 or 4,000 EBAs. So that means that the MBA represents only one-third of the industry.

So at least two-thirds of employers in this state are not members of the MBA. If we were so out of control and the industry was so bad, why are they not members of the MBA? They are not even members of employer organisations, because they are quite comfortable negotiating with us. I started in this industry in 1968. The first major job that I ever worked on was the Westgate Bridge. I was on that bridge when it collapsed and I saw 35 people killed. I was about 21-years-old at the time. Let us compare the industry today with what it was then. The industry has improved 200 or 300 per cent.

There are tower cranes up at the moment. When I started in the industry those tower cranes were up for two or three years; now they are up for 26 weeks. I refer to the building that we visited yesterday. Those structures were built in one week. The crane jumps every week—it does a floor a week—but that never happened 20 or 30 years ago. The industry has improved. The number of unions has gone from 15 to about four. There are fewer demarcations, fewer people work in the industry and the industry is more productive than it has ever been. All those changes have occurred with no third party enforcing them on the industry. Those changes have come about through negotiations.

I do not believe that this industry is the sort of industry that would accept a third party forcing his or her beliefs onto the parties. This industry is changing on a regular basis. Safety and production are getting better. Of course, there are some things in the industry that need to be improved, but they should be done through agreement and discussions between the unions, the membership and employers in the industry.

Senator JOHNSTON—Mr Kingham, how long have you been Secretary of the CFMEU in Victoria?

Mr Kingham—Approaching 12 years.

Senator JOHNSTON—How often is there an election for that position?

Mr Kingham—They are four-year terms.

Senator JOHNSTON—So you have won three elections?

Mr Kingham—That is correct. A team of officials has won three elections.

Senator JOHNSTON—Were there many candidates for your position in those three elections?

Mr Kingham—At the last two elections my position was uncontested. At the first election I contested against a former secretary and I won the position.

Senator JOHNSTON—How many members does the CFMEU have in Victoria?

Mr Kingham—In the Construction and General Division there are approximately 25,000 current financial members.

Senator JOHNSTON—There are 25,000 current financial members?

Mr Kingham—Yes.

Senator JOHNSTON—How many positions in the Labor Party's state executive does that give you?

Mr Kingham—None.

Senator JOHNSTON—Do you have any votes in the Labor Party?

Mr Kingham—We have a delegation to the state conferences of the Australian Labor Party, the same as any other affiliated union.

Senator JOHNSTON—How many delegates do you get?

Mr Kingham—I think about eight or nine.

Mr Watson—I think it is about a dozen between them.

Senator JOHNSTON—Do you believe in the rule of law?

Mr Kingham—I believe that history has shown that, at various times, some laws have been good and some have been bad. Some good people have struggled and campaigned against bad laws. We do that in the CFMEU. We campaign against and oppose laws that we believe are bad and inappropriate. That includes this proposed bill and many of the sections in the current Workplace Relations Act.

Senator JOHNSTON—So you believe in the rule of law as long as you are able to determine whether the law is good or bad?

Mr Kingham—That is not what I said.

Senator JOHNSTON—It is a simple question, is it not? Do you believe in the rule of law?

Mr Kingham—Whether or not I believe in the rule of law, laws apply, and we have to work within them to the best of our ability. That is how we operate.

Senator JOHNSTON—I think you said earlier that you are proud to be a member of a militant union. What is the difference between a militant union and a non-militant union?

Mr Kingham—I believe that the union movement went through a bit of a period when unions tried to operate via an executive, if you like. They tried to enter into accords or agreements with governments and so on, which saw the focus of a lot of unions concentrated at the top level rather than on doing what they do best—that is, working on the jobs, on the ground, representing the interests of their members, listening to them and seeking their views on the types of things that they should be negotiating with employers.

I believe that a militant union is one that consults its members and that involves them actively in the democratic process. We have very active branch meetings, shop stewards meetings and safety representatives meetings—on a monthly basis. There is regular consultation about the issues that the union needs to work on. Because of that exposure and that approach to the membership, we believe that leads to a more militant membership—that is, a membership that is more prepared to work collectively and to be involved in the industrial action that is required to win their claims. That is a militant organisation. I believe we do our best to be militant and to maintain that militant tradition. It is based on participation, activism, and a democratic right within the union.

Senator JOHNSTON—So a union that does not consult its members is a non-militant union?

Mr Kingham—My experience has been that unions that are not actively involved in consulting their members and that are guided and directed by their members tend to become a bit insular. They really concentrate their efforts at the executive level—peak council to peak council—they forget about their base and they do not follow through with the job.

Senator JOHNSTON—In your understanding, what does the word 'militant' mean?

Mr Kingham—I actually looked it up in the dictionary a while ago. It has a number of meanings. The first one that I saw in the dictionary said 'operating in a discipline and as an effective unit; in a military-like manner'. I take that parallel back to members that are disciplined. By working collectively we focus on common conditions and common issues, such as raising safety standards, superannuation, and so on. If we pursue those things collectively, we are much more effective and successful in achieving our goals.

Senator JOHNSTON—So, in other words, your union members act as a cohesive unit?

Mr Kingham—We try to do so. Our goal is to act as a cohesive unit.

Senator JOHNSTON—I think you would be aware that last year in Carlton there were a series of shootings involving your offices in Victoria?

Mr Kingham—Yes. I think it involved both our offices. Late one evening someone came and put a few holes through our windows.

Senator JOHNSTON—How many shots were fired?

Mr Kingham—I think there were two or three at our office.

Mr Watson—There were four or five.

Senator JOHNSTON—There were four or five at your office in the inner city?

Mr Watson—Yes.

Senator JOHNSTON—And at your Carlton office there were two or three?

Mr Kingham—I believe that there were three.

Mr Watson—Both offices are just around the corner from each other.

Senator JOHNSTON—What sort of calibre weapon was used?

Mr Kingham—I do not know.

Mr Watson—I called the police. The police came and investigated the matter.

Senator JOHNSTON—Did the police tell you what sort of weapon it was?

Mr Watson—The police said that it was a handgun, but I forget what calibre it was.

Senator JOHNSTON—You have no idea about the motive behind both of your offices being shot up in that fashion?

Mr Kingham—I have absolutely no idea.

Mr Watson—The police do not have a motive and we do not have a motive either. We did what everybody else would do: we called the police and the police investigated the matter.

Senator JOHNSTON—Have there been any other acts of violence or intimidation upon your offices or upon your executive premises?

Mr Kingham—You would be aware of media reports about arson attacks on the house of the assistant secretary of our division and on a house that formerly belonged to a rank and file shop steward of ours. Again, it is very disturbing to be subjected to those sorts of attacks, particularly if it is your house. I can assure you that it is a very unpleasant experience. No-one would be happy about those sorts of tactics being used against anybody. All we can say again is that the police were immediately advised and they are currently investigating those attacks.

We are co-operating to the best of our ability with the police in their investigation. In fact, following a discussion with the police after their investigation, in the last union journal that was posted out to our members four weeks ago the police supplied an identikit photograph that they created after a witness interview, with his or her agreement, to try to assist in the spreading of information. In that union journal we encouraged anyone in the industry who read the journal and who believed that he or she had information to come forward and provide it to the police.

Senator JOHNSTON—Mr Watson, did you suffer any penalty other than the adverse finding of the royal commission? Did you suffer any penalty, fine, imprisonment, or anything of that nature with respect to the finding of a prima facie case against you for perverting the course of justice?

Mr Watson—As I understand it, the royal commission referred it to the DPP. I am still waiting.

Senator JOHNSTON—Do you anticipate having your day in court, and do you have solicitors employed?

Mr Watson—I do not have any solicitors employed. If I am charged I will then seek legal advice.

Senator JOHNSTON—Will you give evidence?

Mr Watson—Of course I will. Is it not a rule of law that you have to give evidence?

Senator JOHNSTON—You do not have to.

Mr Watson—I will give evidence.

Senator JOHNSTON—Mr Kingham, you said earlier that you had an education and training unit.

Mr Kingham—Yes.

Senator JOHNSTON—Is that an incorporated body?

Mr Kingham—I am not sure of the technical term. It is a body that is recognised by both state and federal government training authorities. It is registered and it is an approved provider.

Senator JOHNSTON—How many employees does it have?

Mr Kingham—There is a detailed submission about our training unit that contains some of those statistics. I could not tell you accurately, but it is about a dozen.

Senator JOHNSTON—How many vehicles does it operate?

Mr Kingham—I do not have that detail with me.

Senator JOHNSTON—Would you take that question on notice and provide that information to us?

Mr Kingham—Certainly.

Senator MURRAY—Mr Kingham, I assume that, given your philosophy and the philosophy of your union, if employers were to adopt a touch one, touch all militant language—the kind of organising and activist techniques that you use—you would consider that perfectly fair and reasonable? That would be their entitlement? In other words, you do not take for yourself one set of actions and do not allow others to use it if they wish?

Mr Kingham—No.

Senator MURRAY—I have some experience of militant organisations. In my view, they are difficult to control. I want to give you an example that I think will illustrate the problem. Think about the United States military in Iraq and their strong sense of mission and determination. Some of their members end up in prison after using military force. They take to extremes what they assume to be the doctrine of their leaders. How does an organisation such as yours, with 25,000 members, who use a lot of confrontational and militant language, prevent people further down the line—at the extremes, if you like, where they are not being supervised or watched over—from taking to extremes if you do not support militant, activist or confrontational behaviour?

Mr Kingham—Certainly part of that consultation and active participation within the union itself means that more people participate in our structures and the rules that govern them. More people participate in the policy discussions about the particular stance that we take. I find that if you go through that process it is much easier to enforce the discipline, if you like, and to apply that policy broadly across the industry. When I was a rank and file member of the union—I was a carpenter working in Melbourne—we had a system via the AIRC and the legislation at the time that stated that, project by project, we could make as big a blue and as big a nuisance of ourselves as we could.

We could go to the commission, get a site allowance and payment for a project that was not necessarily based on the height or the peculiarities of the job—it was based on the capacity of that group of workers—to give the boss the shits and to frustrate production on the site. You heard yesterday from the VBIA what evolved during that period. We had to engage with members and say: 'You can have that system. If you are in a good spot you can get more money than the job over the road.' But what is the advantage at the end of the day? It was a long debate in which we were involved.

Once we entered into the VBIA and put in place site allowance formulas that governed what scale of site allowance workers were entitled to, there was no more stacking on of blues and getting the commission to hand down a decision in order to end a blue and grant a payment. With any automatic, pre-negotiated formula an employer knows well in advance that he is building a certain sort of building in the Melbourne CBD, or wherever it is. He has a guarantee for the life of that project relating to the project agreement, the site allowance and the conditions that apply to that job.

In the middle of the 1980s a lot of our members resisted and did not agree with the position of the union. They wanted the stronger people to get more money. Through our democratic processes, after engaging with people and educating them about the issues, we changed that view. All our members went along with us in relation to changing that view. Now both workers and employers know what sorts of conditions apply in advance on a project. So we no longer have blues about those things. That occurs only when an employer is not following the green book and he is not providing those conditions at all. That is just one example, but I have plenty of others.

Senator MURRAY—As you would know, Mr Kingham, many people from all walks of life—union members and employers—come to my office. In relation to this bill, employers from large, medium and small businesses have visited me and told me that they were unwilling to appear either before the Cole royal commission or before this committee. They told me that the behaviour of your union members has gone to extremes. When I pushed them they accepted that the CFMEU is a tough and confrontational union, but they did not say that the whole of the union—all officials and members—is bad. However, they did indicate that individual members and officials are taking to extremes what they regard as a doctrine of confrontation. If it is not a problem with the union or its style as a whole but it is a problem for some individuals in that many tens of thousands of members are going to extremes, how do you think that should be dealt with in law?

Mr Kingham—I have not had to walk through a couple of courts recently myself, but I have heard of the experiences of others. A whole body of law currently exists for dealing with what people might call excessive behaviour. If you are on the wrong side of the law you find that it is a pretty comprehensive and frightening system. The enforcement is there. It does not follow for me that there should be an argument for some sort of specific law to deal with people who do bad things. There are laws that can be and currently are being enforced. I know what you are saying in relation to excessive behaviour, and in relation to not sticking to agreed procedures.

We have in place mechanisms so that employers can raise those concerns with us. We have our own structures for the coordination of organisers. We are very proud of that discipline. We are proud that we have provided those sorts of policies. When cases of excessive behaviour have been brought to our attention we have been able to deal with them to ensure that they stop. If we cannot deal with them, as I said earlier, there is plenty of existing legislation to deal with them.

Senator MURRAY—In your view, existing law is sufficient. However, you said that it should be enforced where it applies?

Mr Kingham—Yes, if it is necessary.

Senator COOK—Throughout the course of this inquiry we have been told to wait until the committee gets to Melbourne as that is the trouble spot and that is where key witnesses will be giving evidence. I have been allocated a total of 20 minutes within which to ask questions. I am happy to give up some of my time to Senator Tierney and Senator Johnston, if they have further questions to ask of these witnesses. I think it is important that they be given an opportunity to ask all the questions that they want to ask. If Senator Tierney and Senator Johnston do not wish to take up that time, I would be happy to give it to Senator Murray. It is important that both

government and Democrat senators have an opportunity to ask these witnesses whatever questions they want to ask them.

Senator MURRAY—Mr Kingham, you might not be aware that I have been roughed up by the justice system once or twice. With respect to your circumstances, you were charged, tried and acquitted, were you not?

Mr Kingham—That is correct.

Senator MURRAY—So you would accept that the system worked for you?

Mr Kingham—I accept that I was lucky.

Senator MURRAY—Anyone who gets off is lucky.

Mr Kingham—And it was not cheap either.

Senator MURRAY—I wish to ask you a question that relates to fairness. The view that has been expressed is that you are not a fair man. I give to you this example: you strongly criticised—in fact, you used condemnatory language in relation to—the task force. In fairness, I would have to say that the task force had a lot of cases referred to it. From my understanding of what it did, it examined the evidence objectively and it said, 'There is no case to answer,' and it then threw them out. I would have thought that that body of people was properly doing a job that it was requested to do. Yet you did not give it any credit. Perhaps it should not be given credit for doing its job. It seemed to me that, in your remarks, you did not recognise the fact that it had done the right thing. It assessed the claims and the evidence, established that they did not stack up and it threw them out. Is that not the way that it should work?

Mr Kingham—You would understand from the Senate estimates committee process relating to the task force that it knows it is being subjected by us to public scrutiny. To the best of our ability—and that is not much—the Senate estimate committee process gives us an opportunity at least to ask the task force questions about the prosecutions that it is following up and the investigations that it is undertaking. I know that adverse findings were found against me as well, and they are a joke. The task force was given, if you like, a poisoned chalice from the royal commission, in terms of defective allegations and case studies. No-one—the task force, the police investigators, state and federal, and the DPP—would be able to do anything other than throw them out because there was no evidence to back up those claims. So, to that extent, I was certainly very happy that it threw them out because it confirmed our belief that all those claims were without evidence. But I do not believe that that rationalises its existence. Police forces, state and federal, DPPs and the Attorney-General's Department can all do that job as well.

Senator MURRAY—Let us refer to its existence and to regulators. People know that I am a strong supporter of regulators, as are many Australians—the ACCC, ASIC, APRA, the ATO, or whoever it is. Some of the evidence that we have received, depending on the state or territory and depending on the circumstances, reveals that there is not enough regulatory interaction. You do not always want police forces. Sometimes there are occasions when unions and employers are just not sufficient. Just backing off from the task force, WorkSafe or anybody else, do you think there is a need for access to third parties at times, apart from unions and employers? I do not

mean the Industrial Relations Commission, as it is not a regulator; it is a tribunal. Are there occasions when it would help to call in somebody to go through an employer's books because it has become difficult for the union to examine a particular occupational health and safety issue, or to deal with a dispute right there on the site? Would it help to bring in a third party?

Mr Kingham—I will relate to you my experience of regulators that are driven by government and by whatever other form of legislation. They get hidebound in relation to the limitations in their briefs. The industrial relations system in Australia has moved on somewhat. In my mind it has moved from centralised wage fixing and award based conditions. The reality in our industry is that the majority of conditions under which people are employed are not achieved as a result of those mechanisms and, therefore, they cannot be enforced by a regulator.

With reference to wages and conditions, we have a regulator called the Office of the Employment Advocate. They are out there, they are funded, but they are completely ineffective. That is the concern that I have in relation to regulators. We find that the best outcomes are actually ones that are achieved through negotiation and consensus. We have found that one of the advantages of the AIRC, surprisingly enough, is that some of the commissioners have been flexible enough to go beyond their obligations under the act and they have taken out a charter to encourage parties to get together and resolve issues in such a way that both sides to the argument can walk away with the issues resolved after compulsory conferences or non-compulsory conferences.

We have found that the best and most lasting outcomes have been achieved by employers by consent—allowing commissioners to conciliate rather than arbitrate. I believe that we could achieve that more comprehensively by re-resourcing the AIRC, which has served this country very well for a long time. Bureaucratic public service regulators, once they are out there, tend to go to the lowest common denominator. In our industry that would be the award conditions on which very few people actually work. It would have a limited effect. At the end of the day there would still be arguments between parties about the EBA or the industry standard, and we would be back in front of the commission, regardless of the fact that we have a regulator.

Senator JOHNSTON—Mr Kingham, are you aware of the provisions in the bill that deal with coercion?

Mr Kingham—In broad terms, yes.

Senator JOHNSTON—Do you support the use of coercion in industrial relations in Australia?

Mr Kingham—I think the term 'coercion' is a very emotive term. The fact of the matter is that in industrial relations, and under this government's Workplace Relations Act, the parties have no choice. They are obliged. If they cannot reach agreement at the table they have to engage in protected industrial action. That happens both ways. The previous enterprise bargaining agreement that was negotiated in Victoria was characterised and legalised by coercion of construction workers. Employers sent out people to knock on the doors of my members at two o'clock and three o'clock in the morning. They would hand them scary looking letters directing them to work as normal and not to follow any of the legally protected industrial action that had been initiated by the unions. They were threatened with being locked out of their

employment and denied the right to work and earn a living. That happened to thousands and thousands of workers at two o'clock and three o'clock in the morning. It is coercion; it is legal. When we go on strike and we issue protected action you call it coercion. It is legal; it is not against the law.

Senator JOHNSTON—What about unprotected action?

Mr Kingham—If we engage in unprotected action we expose ourselves to all sorts of sanctions.

Senator JOHNSTON—Do you engage in unprotected action?

Mr Kingham—Our members engage in unprotected action from time to time. There are site based issues and there are, of course, lots of disagreements at times about the safety of jobs. Workers stop work in dangerous areas.

Senator JOHNSTON—Do you have a view about unprotected action? Do you encourage it or discourage it?

Mr Kingham—Obviously, we try not to expose the union and its assets to the type of risk that is associated with it.

Senator JOHNSTON—That does not answer my question. Do you condone and encourage unprotected action?

Mr Kingham—We certainly have.

Senator JOHNSTON—If I said to you that coercion was 'the forcible manipulation of a person's free will so that he or she had no real choice as to whether or not he or she participated as a member of a union in the building industry', would you support that principle?

Mr Kingham—We encourage full participation in our union. We encourage workers who are covered by agreements negotiated by the union that give them significant pay increases over the awards to pay for that service, just as the AMA does for doctors and just as the Bar Council does for lawyers. I am not sure, but senators might even have their own club, association or union of which they have to be a member. We do the best that we can. I wish that we were 100 per cent successful. Obviously, we are not, but we try our hardest.

Senator JOHNSTON—Do you support the forcible manipulation of a person's free will so that he or she has to join a union in order to obtain a job in the building industry?

Mr Kingham—I do not support that and I do not engage in it. We encourage and we do whatever we can to ensure that those people who enjoy the conditions for which we negotiate pay for that service join the union.

Senator JOHNSTON—So you do not support the mandated no ticket, no start?

Mr Kingham—You keep changing the question. I worked here as a rank and file carpenter under the regime of no ticket, no start. I worked on building sites alongside people who were not members of the union.

Senator JOHNSTON—Do you support no ticket, no start?

Mr Kingham—I would prefer a situation where everyone was in the union. Everyone who enjoys the conditions that are negotiated by the union should be a member of the union. Yes, I do.

Senator JOHNSTON—So you support the position of no ticket, no start?

Mr Kingham—I support the ideal that people who enjoy the conditions negotiated by the union should be members of the union.

Senator JOHNSTON—I could spend another half hour with this witness, but obviously time prevents me from doing so.

CHAIR—That opportunity could be made available to you, Senator.

Senator JOHNSTON—I will place my questions on notice.

Senator JACINTA COLLINS—Mr Kingham, when you referred earlier to the MBA you reminded me of an issue that I did not have an opportunity to raise with it yesterday. Part of the submission by Ms Atwood related to some workers working on rostered days off. She implied that all that was provided in EBAs was a duty to notify the union. I had a look at this agreement. I understand that, to some degree, in some cases the EBAs might vary from the provisions contained in this agreement. On page 53 of this agreement there is a fairly clear provision that work on an RDO relates to unforeseen circumstances, such as emergency conditions et cetera. Is that a general provision in an EBA?

Mr Kingham—That is the VBIA provision which is contained in our certified EBAs. But our EBA talks about a regime of consultation, notification and agreement over RDOs, weekend work and so on. It was a formula that was negotiated in the last EBA and I believe it is a formula that works. We believe it is appropriate that we should be consulted.

Senator JACINTA COLLINS—I simply wanted to test her credibility because the implication, clearly, related to an issue of managerial discretion. It does not seem to hold up in this agreement and in the EBA provisions.

Mr Kingham—I was not present, but I think Ms Atwood's comments are consistent with the whole tenor of the MBA's claim in its submission that we regularly flout the commission's decisions. We actually have not, and it has no evidence that we have. So it is in the same category.

Senator COOK—How is the tooth, Mr Kingham?

Mr Kingham—It is gone, so it is much better.

Senator COOK—So you are now toothless, Mr Kingham? Having heard about your reputation, are you now a toothless being?

Mr Kingham—I am a toothless tiger.

Senator COOK—In your opening submission you described your organisation as a militant union, that you nonetheless play it hard but within the law. The proposition that you are putting to us is that this is a tough industry but, on behalf of your members, you are tough in their defence, but you are fair and you are law-abiding. Whether or not you like the law is another matter and you reserve the right to change it. But in your practical day-to-day work you work within it?

Mr Kingham—Yes, that is right. We do the best we can within the laws that exist at the time.

Senator COOK—I refer to your earlier reference to no ticket, no start. Are you saying that your position is that free riders should not be allowed—people bludging on a deal made by union members who pay their dues and who then access those benefits without making a contribution? Are you opposed to that type of free riding?

Mr Kingham—We are very much opposed to free riding. It is really a case of letting down your mates. The reality is that you cannot put up a building without the people who work on that building site cooperating with each other—the plasterer, the carpenter and various tradespeople. People have to cooperate. People actually have to get on. When there are freeloaders or people riding on the system it creates tensions.

Senator COOK—How do you see your role? Is it the role of your union to negotiate wages and working conditions for its members in this industry; to recover underpayment of wages where that occurs; to take up issues of workers compensation on behalf of injured workers to ensure that they get fair treatment within the law; to provide services on training and skills; to update the skills and competence of your members; and, where necessary, to cooperate with taxation authorities to ensure that there are no free riders on the Australian taxation system?

Mr Kingham—We have to do all those things. The things that you can never get away with are birth, death and taxes. Those are the functions of the union, which I tried to highlight in my opening remarks. We not only do that work, which is legitimate work for us to do; we train people to provide services to members, to try to be involved in improving laws where we have access to them. That is part of our role. It is a big job and someone has to do it. We are happy to do it.

The underpayment of wages is just one example. That is one of the few findings of the royal commission that I actually accept as factual. It went through the records of our union's wage claim department, over an 18-month period, and found that the Victorian branch of the Construction and General Division had recovered in excess of $10 million in underpayments from employers. That related to both the hourly rate that was contained in the agreement and also to entitlements—payments, superannuation, annual leave, sick pay and so on. Workers had been robbed by employers. That amounted to $10 million in workers entitlements that were paid back to workers who missed out. That all got taxed and the taxation office got its share of it too.

Senator COOK—An amount of $10 million or more?

Mr Kingham—An amount of $10 million or more over an 18-month period in Victoria alone.

Senator COOK—I think you were here yesterday when Mr Boyd gave evidence. Workers compensation premiums have been reduced in this state and the benefits have remained the same for workers. Do you take any responsibility for union activity enforcing better safety and occupational health conditions on sites, for bringing about a reduction—which was also part of Mr Boyd's evidence—in the incidence per thousand man hours of occupational health and safety?

Mr Kingham—Obviously we do. For a long time the union has employed dedicated, full-time occupational health and safety officers who have worked within the provisions of the Victorian Occupational Health and Safety Act, getting health and safety representatives elected and recognised on sites, supporting them, servicing them and resourcing them. The statistics speak for themselves. There has been a reduction of fatalities and injury rates. I am not all that excited about the reduction in WorkCover premiums because I believe that there should be a system, and the union believes that there should be an incentive system in the WorkCover system, that actually rewards employers with better performance and penalises employers who injure workers.

Senator COOK—Notwithstanding that union view, the reduction in workers compensation premiums would have been impossible without a reduction in accident levels?

Mr Kingham—That is right. It would have been impossible without the initiative of the union.

Senator COOK—And the small businesses that populate this industry have benefited as a result of lower premiums, as a consequence of your work on occupational health and safety. Is that a fair proposition?

Mr Kingham—That is correct. That is a benefit that is applied across all industries.

Senator COOK—Mr Watson referred to four adverse findings. I would like to take some time to go through some of them. Have you had adverse findings made against you?

Mr Kingham—Yes.

Senator COOK—Have any of them been brought to fruition?

Mr Kingham—Not one. I have been interviewed by no-one in relation to them—a task force investigator, a royal commission investigator, or a federal or state police officer. I have been investigated by no-one. I have no knowledge about what is going on in relation to them, the same as Tommy.

Senator COOK—How long ago were these findings made against you?

Mr Kingham—Progressively during the course of the royal commission.

Senator COOK—A couple of years ago?

Mr Watson—About 18 months ago.

Mr Kingham—The first ones were made about a year and a half ago, I suppose.

Senator COOK—The interim building task force exists to investigate these things?

Mr Kingham—That is right.

Senator COOK—Has it interviewed you in relation to any of these adverse findings?

Mr Kingham—No, it has never spoken to me about any of the findings.

Senator COOK—Do you share Mr Watson's views in relation to how you have been dealt with as a result of those adverse findings having been made public and no action being taken to resolve them?

Mr Kingham—Yes. As I said earlier, there has been a great disservice and great disrespect not just to the two blokes that you see sitting here; but to our entire industry. It does not include just us. Rank and file members, shop stewards, union workers and, in some cases, employer representatives have also been smeared without any right to defend themselves. We were denied the right to cross-examine witnesses who provided information to the royal commission that led it to making its interim findings against us and against other officials and rank and file members of the union, which is an absolute travesty of justice. As Tommy pointed out, in this electronic age all of that is on the Internet. All of that is open to anyone in any country. We have no recourse. We cannot protest. There is nothing we can do about it to change it. We cannot even go anywhere to get an indication of whether or not an investigation is happening. It is clouded in secrecy, and for no good reason.

Senator COOK—Chair, government senators have indicated that they would prefer to spend more time with these witnesses. I am happy to support such a proposition on the understanding that we have equal additional time with the MBA. We wish to ask the MBA a number of questions, in particular, relating to the allegation by the MBA that people are intimidated about appearing before this inquiry. If people are, that is an offence against the Senate, and it is subject to penalty. If this evidence is important I am happy to find a way that will enable us to take additional evidence. However, I also want to spend equal time with the MBA to pursue some of its arguments.

CHAIR—We will have a private meeting during the lunch break to determine what can be done to accommodate both government and Democrat senators.

Proceedings suspended from 10.40 a.m. until 10.57 a.m.

BIRKETT, Mr Mark Lonsdale, Contracts Manager, Maxim Electrical Services (Vic) Pty Ltd

DIXON, Mr Charles Anthony, Managing Director, Enviro Electrics Pty Ltd

CHAIR—We welcome our next witnesses from Enviro Electrics and Maxim Electrical Services. The committee prefers all evidence to be given in public. However, it will consider any requests for all or part of your evidence to be given in camera. The committee has before its submissions Nos 2 and 7. Are there any changes or additions that you want to make to your submissions?

Mr Dixon—No.

CHAIR—I now invite you to make a brief opening statement.

Mr Dixon—I have been working in the electrical industry since 1982. I started as an apprentice. I actually support pattern enterprise bargaining agreements as they are at the moment. I feel it is easier to price jobs. It runs on a level playing field, so it is easier to control your funds throughout the job. I am afraid that if that gets changed, it will be a lot harder to estimate jobs and it will be a lot harder to win jobs, which could affect companies' cash flow and employees benefits as well. I understand you are trying to achieve a more cost-effective industry, but I think you will find that keeping the current pattern EBA system is the way to go.

Mr Birkett—My statement is similar to what Charles has said. I have been in the industry for 25 years. I started as an apprentice and I worked my way up through management. I have been with various companies. In the olden days when there were no pattern agreements, when there were awards, there were different awards and we would be tendering for work where we were paying, being a larger contractor, a higher award and we would be competing against middle-size contractors who would be paying a smaller award and found it a very uncompetitive market. To try to keep your work force on, sometimes you made commercial decisions to go in at a cheaper price knowing who you were competing against, which then caused problems with your cash flow and everything else, which had an effect right across the job with your subcontractors, your suppliers and everything else.

Since the pattern EBAs came in, the first one had a few teething problems and everything else, but as the pattern bargaining agreement is at this present time, as Charles said, it is a very level playing field. We all know what we are up for. We all know what we have to pay. We all know what we have to front. It is very easy for us to set our costs into our estimates. We know what it takes us to do a job. We know what it costs us for our materials, so it is very easy for us to put a price together and then negotiate with the builder-client, whatever else, and we have found that our profits across the company, since pattern EBAs have been in, have definitely improved from what they were when we were under award conditions. So that is why I am here—I am fully supportive of it—because I know that under the old award structure there was a lot of work we did not get because we could not compete. That was because of the different levels that people were being paid. When every company is having to pay the same thing, it is a lot easier for us all

to be out there in a competitive market. I would hate to see it change and go back to where it was.

CHAIR—Mr Birkett, are you an electrician?

Mr Birkett—I am an electrician by trade, yes.

CHAIR—How many employees do you have?

Mr Birkett—I have 100 electricians and 24 apprentices.

CHAIR—Do you do your own quotations or quotes?

Mr Birkett—I have an estimator who works for us. He does all the estimates—most estimates, depending on the size. Our work varies from jobs worth $300,000 up to jobs worth $10 million, so we do a variety of work. We have five project managers within the company. We then have the supervisors who have their foremen, so it is quite a large structure, and then we have our administrative staff and an estimator who estimates all our projects. The bigger ones he runs past me because we have to look at the contractual conditions of it to make sure he has allowed for everything and make sure we have picked up all the subcontractors when we tender our price.

CHAIR—What are the circumstances of your company, Mr Dixon?

Mr Dixon—We have about 55 electricians and we do supermarkets and shopping centres and things like that.

CHAIR—You are an electrician yourself, by trade?

Mr Dixon—Yes.

CHAIR—Do you do your own estimating?

Mr Dixon—Yes. I have an estimator.

CHAIR—You have an estimator as well?

Mr Dixon—That is basically just to watch over the funds and so forth, and the normal running of the business. With the pattern EBAs, I just think that if they tried stopping those, it would cause a lot of industrial disputes as well which none of us wants.

Mr Birkett—That is a fair statement that Charles has made. Under the old award conditions, the award used to run to just before Christmas. I remember the old days the boys used to be out the gates for two or three weeks which caused huge unrest and a lot of uncertainty with the guys and everything else because it was right before Christmas. With the pattern agreements as they are now, there is a bargaining period right up before the EBA runs, and nine times out of 10 we can get the EBA through the National Electrical and Communications Association finalised and everyone agreeing with it before it goes into protected action where they can start causing

industrial unrest. So it has caused a lot less unrest on the jobs. We all know where we are at and every time there are discussions between NECA and the unions which represent us we get all the feedback, we are allowed to comment on it, and we can go to meetings with NECA. I just feel that it is a much fairer system because it is on a level playing field. You get to listen to other contractors and to what their concerns are and everything else. NECA hold quite a few seminars on it and, before it is all finalised, we all get to have our input.

Senator MARSHALL—What is the size of your companies in the scale of actual contracting?

Mr Birkett—We would be, I would say, the fifth largest electrical contractor in Melbourne.

Senator MARSHALL—And Mr Dixon's?

Mr Dixon—Middle range. There are a lot of companies with 50 or so electricians.

Senator MARSHALL—And NECA is the employer organisation?

Mr Dixon—Yes.

Senator MARSHALL—And both companies are members of that?

Mr Dixon—Yes.

Senator MARSHALL—Is it NECA's position to support pattern bargaining?

Mr Dixon—I believe so.

Mr Birkett—Yes, I think they do.

Senator MARSHALL—Would you say that it is widely supported throughout the electrical contracting industry by employers?

Mr Birkett—Oh, for sure.

Senator MARSHALL—You talk about it creating a level playing field which gives you some stability in terms of tendering for work, and that adds consistency. Of course there are other price factors that might be variable. You talked about materials as well. If wages are level and equal and you know that you are going to be competing with other people who also have common wages and conditions, so that your price cannot be undercut by wages and conditions, what are the issues that you win jobs on then?

Mr Birkett—The knowledge of the type of work we do. Between ourselves, Apps Electrics and Elecraft, we would be seen as the apartment kings. We are doing most of the apartment blocks. We are doing the old Russell Street police headquarters on the corner of Russell and Latrobe, we are doing the Condor apartments down at the Docklands, we are doing the City Tower and the Melbourne Tower at the end of the Red Cross bank. We do a lot of apartment jobs.

Part of my role within the company was to work out what those apartments were costing us. The very first one we did we monitored by job costing all the tasks. We saw how long it took us to do and we then looked at how we could improve on that with labour and resources, how we attacked the job and how we did the job. We work in conjunction with the builder when we go in. For the first few apartments we were going in and out, wiring and fitting. We were attending five times to finish off one apartment, but we have now got that down to three, so we have finetuned the way we approach the job. We now know what those jobs cost us. We know how much material is required on those jobs, so we know what the costs are. We know the profit that we want to make on that job. We know what is the daily cost to us because of the way we are going to do the job.

We are seen as the experts in that field. Someone like Charles, who has never done an apartment block, might come along and he is going to go as we did five years ago when we first started doing apartments and price himself out of the market because he is not used to the way these jobs are put together. You need a sure knowledge of the type of jobs you are taking on. We are very selective about the type of work we do. We do cinema work, we do shopping centres, we do apartment blocks and we do commercial buildings. We do not do any other type of work. The people we are competing against have all got their own ways of doing it, and we win some and we lose some.

Senator MARSHALL—So it is innovation, productivity and efficiency that actually win these jobs rather than being able to compete on wages and conditions?

Mr Birkett—I believe it is, yes.

Senator MARSHALL—You have been able, through that stability in the wages market and not having to compete in that area, to develop a consistent productive improvement throughout the process which enables you to specialise in this area. Is that what you are saying?

Mr Birkett—Yes, and further to that it has allowed us to manage a cash flow. Any business will suffer cash flow problems every now and then. I do not think there is a business in Victoria that has not suffered cash flow problems. But it is now a lot easier to manage because we know when there is going to be a pay rise under the pattern bargaining agreement. We can forecast that in. So if we are going to take a job on that will take two years, we know what our costs are going to be two years down the track and we can factor that into our labour rate. The same applies to materials: when we place an order, we hold that material and place the orders very early and if there are going to be increases, we then negotiate with the supplier to get the equipment in early. So we know what our costs are and we know what our profit is going to be if we can manage our labour, and then we know what a cash flow is going to be, so then we have been able to build a very good relationship with our subcontractors and our suppliers because we know we can pay them when we need to pay them on time because we have been able to manage our cash flow. We know what our costs up-front. It has been a lot easier for us to manage as companies for those reasons. Our suppliers and some contractors like to work with us because they know they can manage their cash flow, because they know that they are going to be paid on time. It just flows all the way down the line. We have seen a lot better profit margin in the past three years, even though the market is a lot more competitive, because there are more contractors there, but we have seen a better profit because we have been able to manage a business as a business, knowing what are costs are.

Senator MARSHALL—Have you developed software and specialised systems to enable you to monitor?

Mr Birkett—One or two for monitoring, yes. We use, obviously, Microsoft products, mainly Excel spreadsheets. We know what every subcontractor's order is worth. We know when his claim is. We do all our progress claims on the 25th and we get all our suppliers and subcontractors to tell us what they going to be asking for by the 20th. Because we can tell what their costs are going to be, we put that into our progress claim. It goes through, we get paid and they get paid. It is just very easy to manage all the way through.

Senator MARSHALL—How much involvement of the industry—and I am talking about the contractors—is there in the actual negotiation of a pattern agreement across the industry?

Mr Birkett—As much as they want to. With NECA I have gone to most of the meetings representing Maxim and I have had my say on issues that have come up. The log of claims, as I put it, will come through saying, 'This is the draft of what the EBA is going to go.' That is handed out to all the contractors. We get the review note and then make comments by written submission. Then there are seminars on that. The last one I went to there were probably 40 or 50 contractors all sitting there having a bit to say about different things within the EBA. Then NECA goes back and discusses that with the unions. Then a final draft or another draft will come out. It will go backwards and forwards for a couple of weeks.

Senator MARSHALL—While you are actually describing these negotiations, it has been put to the committee that the reality is that there is no negotiation—that the unions are all so powerful that effectively it is a take it or leave it approach. If you try to stand up against the unions or try to negotiate for something different or step out of line, you are industrially crushed. That does not seem to be the picture that you are painting. I would just like you to comment on that.

Mr Birkett—No, that is not the way that I have ever seen it. As I say, we fully support the pattern agreement. We are members of NECA. We let NECA represent us. If there is anything in there that I do not like as a company, Rob Minney, who is a director of the company, and I will talk about it. Then I will go along to NECA or I will put something in a submission to NECA, and then say, 'These are our feelings on this issue.' NECA represent the group as a group. They are representing the major contractors like ourselves—and the middle-range contractors and also the small contractors—an it is a fair playing field for all.

Senator MARSHALL—Once the agreements have been negotiated, individual companies sign up for them in different forms. I understand in your industry there may be some alterations from time to time to suit the specific needs of a company. But once they are entered into, it has also been put to the committee that the unions are unable to keep their word; that they are unable to abide by the agreements that they have freely entered into. Is that your experience?

Mr Birkett—No, not at all. Everything that has ever happened with the EBA, there are processes.

Mr Dixon—Sometimes you will get a steward on-site who might be a new steward or might be a little bit excitable, for want of a better word, who may stress and go outside the guidelines

of what the EBA sets as far as a safety issue or an industrial issue, or something like that. At times when I have had that I just ring up the organiser that is involved with that steward and it has been resolved on-site on the day by saying, 'This is the EBA. This is the process we follow.' Again, in the EBA, the processes we take through are quite clear if there is a problem on-site.

Senator MARSHALL—Is not the Victorian construction industry plagued with unlawfulness, criminal activity and thuggery? These are all allegations that have been made against this industry in Victoria. Again, that does not seem to be the picture you are painting here. Have you seen lawlessness, criminal activity and thuggery throughout the industry?

Mr Birkett—Not at all.

Senator MARSHALL—You actually started your time in the industry as an apprentice and moved through and you now run significant businesses.

Mr Birkett—Yes.

Senator MARSHALL—They are obviously thriving?

Mr Birkett—Yes.

Mr Dixon—We are doing well at the moment.

Senator MARSHALL—You are not seeking to leave Victoria?

Mr Birkett—Not at this stage, unless my ex gives me more grief than she is at the moment.

Senator MARSHALL—I just want to ask you about income protection. The reason I am asking is that it was something that was raised in the royal commission. The scheme in the electrical industry I think is called Protect. Are you aware of the income protection scheme?

Mr Birkett—Yes.

Senator MARSHALL—Can you give me your view on how it operates and whether you think it is a valuable scheme for the industry?

Mr Birkett—When it was first brought up that the unions wanted to have this Protect insurance, our initial response was that it was an extra cost that we did not want to have to fund and everything else, so initially we were against it. When it eventually did become obvious that it was going to be—because it was a fairly strong push from the unions who wanted the protection of the employees—eventually we all sort of said, 'Okay, let's run with it.' Since it has been in, I can honestly say that our WorkCover premiums have reduced. The number of false claims for injury at work rather than doing it at home has dropped dramatically and is well noted within our company.

We had a guy who—I will not mention names—had a bit of name in the industry for being a bit more union orientated than the average bloke. The fact that the Protect insurance was there, he had an injury at home and buggered his knee and said he would be off for two months, but he

has been off for two years. He used the Protect insurance. Whether that has anything to do with it or not, it is clear that there is less chance of false claims against WorkCover. It is very difficult for us to prove whether the guy did it himself at work by tripping over a set of stairs or actually did it before coming to work. But now with Protect there, he uses Protect. It is not costing us because we have already allowed for it in our estimates, and I am all for it. I think it is one of the greatest things ever invented. I eventually got insurance for myself that is very similar. I do not use Protect; I use one through the Westpac Bank.

Senator MARSHALL—So you are not covered by the enterprise agreement?

Mr Birkett—No, I am staff. I would like to be because I would get a 36-hour week and a few other things. It would be great.

Senator JOHNSTON—Gentlemen, I must say that you do not look too happy to be here today. Are you nervous about these proceedings?

Mr Dixon—I am just nervous about public speaking, that is all.

Senator JOHNSTON—Fair enough. Just relax. Have you discussed your evidence here today with any member of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia or the Construction, Forestry, Mining and Energy Union prior to coming in here today?

Mr Birkett—No.

Senator JOHNSTON—Not at all?

Mr Birkett—Not at all.

Senator JOHNSTON—Mr Dixon, you had no discussions with anybody?

Mr Dixon—No.

Senator JOHNSTON—Are you sure?

Mr Dixon—Yes. Except for Vanessa.

Mr Birkett—The only person I have discussed it with is obviously the director of the company. We both had the same—

Senator JOHNSTON—Mr Minney?

Mr Birkett—Rob Minney, yes.

Senator JOHNSTON—How did you come to know of the committee's inquiry, Mr Birkett?

Mr Birkett—To be honest, I was thinking about it because I actually thought that probably would be a question. I cannot remember whether it was a flyer that came through NECA, because we get all the NECA alerts, and Rob and I go through that. I cannot actually say but I believe that is where it was from, an NECA alert, where there were going to be threats against the EBA. I sat down and spoke to Rob, and I had some discussions with Phil Green from NECA and everything else. Then when submissions were sought, I honestly cannot remember why, I just felt that because of where we are in the industry now and the benefits we see in the pattern bargaining agreements, I submitted a submission.

Senator JOHNSTON—So you have not discussed these proceedings with Mr Mighell?

Mr Birkett—No. I have not spoken to Dean in probably two years.

Senator JOHNSTON—Mr Setches?

Mr Birkett—I do not even know him.

Mr Dixon—I do not know him.

Senator JOHNSTON—So nobody except—is it NECA?

Mr Birkett—NECA and Rob Minney.

Senator JOHNSTON—Right. Mr Birkett, you said in your evidence that you find the existing system satisfactory.

Mr Birkett—Yes.

Senator JOHNSTON—That the union has abided by its pattern bargaining agreement?

Mr Birkett—On the jobs I have been involved in, yes.

Senator JOHNSTON—And your company has no real issues with the way the existing system is working, and it is a smooth and harmonious relationship, I thought you were saying.

Mr Dixon—Ninety-nine per cent of the time.

Senator JOHNSTON—Ninety-nine per cent of the time?

Mr Birkett—Yes. There have been a couple of times where, again through the processes of the EBA, we have ended up in the commission. That is the industry we are in. There were no hard feelings on either side and it was resolved. That is what we are all here for. We want it to be as harmonious as possible on the construction sites because it is when it is inharmonious that the guys on the jobs get disgruntled and productivity goes out the door. Once you get an inharmonious site, it is very hard to turn it around.

Senator JOHNSTON—I thought you were saying you did not have any issues with the compliance by the union with its EBA.

Mr Birkett—I do not, but in every EBA there are separate procedures where there is negotiation if you cannot agree. You are not going to agree on everything.

Senator JOHNSTON—It is a good relationship?

Mr Birkett—Yes.

Senator JOHNSTON—In your experience, does the union abide by the dispute resolution procedure?

Mr Birkett—On the jobs that I have been on, yes.

Senator JOHNSTON—The jobs that you have been on.

Mr Birkett—Yes.

Senator JOHNSTON—You are in charge of all the jobs, are you not?

Mr Birkett—Yes. I am talking about all the jobs that Maxim has been involved in.

Senator JOHNSTON—Let us just clarify that. The union has always abided by the EBA, to your understanding, on Maxim jobs?

Mr Birkett—Yes.

Senator JOHNSTON—Can I take you to 16 January 2004 in the Industrial Relations Commission before Commissioner Grainger. Are you aware of those proceedings?

Mr Birkett—Yes.

Senator JOHNSTON—Tell us about them.

Mr Birkett—I believe that is the one where, under our EBA, the unions can, through negotiation, appoint a steward on the job. We had a different steward that we wanted to put up on the job.

Senator JOHNSTON—Did they not want you to employ an additional person whom they wanted to be elected as the shop steward?

Mr Birkett—There was a steward that they had in mind, yes.

Senator JOHNSTON—And you had to go and employ him.

Mr Birkett—Yes.

Senator JOHNSTON—They wanted you to employ him, and you had no room for a further employee.

Mr Birkett—That was the argument I was putting up at that stage, yes.

Senator JOHNSTON—So you went off, pursuant to section 99 of the Act.

Mr Birkett—Yes.

Senator JOHNSTON—What were you alleging?

Mr Birkett—We were alleging that we were being forced to take on a steward that we did not want when we had other stewards in the company, to my recollection anyway.

Senator JOHNSTON—They had breached the agreement, had they not?

Mr Birkett—No. As the commissioner said, to my recollection of the proceedings, they had followed the procedure because we had actually failed, ourselves, by not negotiating as per the EBA which steward we wanted to be on that job because it does say that it will be through joint negotiations between the unions and the employer.

Senator JOHNSTON—Mr Kennedy represented you.

Mr Birkett—Yes.

Senator JOHNSTON—Do you know Mr Kennedy?

Mr Birkett—Frank Kennedy, yes.

Senator JOHNSTON—How often would you use Mr Kennedy?

Mr Birkett—In the last three years, that is the only time, from my recollection, I have been to the commission with Frank. There have been a couple of times where I have rung Frank up for clarification on different things within the EBA.

Senator JOHNSTON—Who is Mr Kennedy?

Mr Birkett—Frank Kennedy is employed by NECA. I believe his role is as an industrial relations officer.

Senator JOHNSTON—Yes, the industrial relations officer of your peak body group.

Mr Birkett—Yes.

Senator JOHNSTON—He said to the commission, did he not:

We have in place at the moment bans on a variety of electrical work at three sites, one is the Condor apartment construction at the Docklands area, another is a shopping centre at Caroline Springs in the western suburbs and the third is a residential development, Concept Blue, which is in the city here in Russell Street. The bans include no electrical work being done at Condor and Caroline Springs, no live testing at the towers and no resetting of temporary supplies and no live connections to the main board of the towers.

How long were those bans in place?

Mr Birkett—Some were flexed. I would say a period of a week or a week and a half, from my recollection.

Senator JOHNSTON—How much did that cost your company?

Mr Birkett—To be honest, it did not actually affect us because nothing tripped and we were able to do other productive work.

Senator JOHNSTON—But did you not allege to the commission that you were facing liquidated damages of $10,000 per day.

Mr Birkett—Yes.

Senator JOHNSTON—Were you facing liquidated damages of $10,000 per day?

Mr Birkett—There was a threat that if it could not be resolved, that could happen, yes.

Senator JOHNSTON—So that was what the company was facing. You went to the commission. Obviously these bans were very serious. You could not get any electrical work done.

Mr Birkett—Yes.

Senator JOHNSTON—Mr Birkett—

Mr Birkett—It was not that we could not get any electrical work done, and it is a while ago now. There were certain types of electrical work that they were asking us not to do and, as I said, we were able to do productive work elsewhere. But then, after that meeting, all the bans were lifted and we went back into negotiation as a result.

Senator JOHNSTON—Yes, but you went off to the commission.

Mr Birkett—Yes.

Senator JOHNSTON—You issued a section 99 application.

Mr Birkett—Yes, under NECA's advice.

Senator JOHNSTON—Yes. Had you tried to resolve the dispute prior to going to the commission?

Mr Birkett—There had been a couple of discussions, yes.

Senator JOHNSTON—To no avail.

Mr Birkett—To no avail at that stage.

Senator JOHNSTON—The bans were already in place, were they not?

Mr Birkett—No, the bans were put on after negotiations had sort of failed.

Senator JOHNSTON—So these bans were put in place for a week and a half, did you say?

Mr Birkett—I would say approximately about a week and a half, yes.

Senator JOHNSTON—All right. You say the bans were justified, do you?

Mr Birkett—As I said earlier, when it came through the commission there was a process and there was one part that we had missed where we were meant to—and there was a process in the EBA and we bypassed that. When we got back to that point, that is when we were able to resolve it.

Senator JOHNSTON—Your man, Mr Kennedy, says—and I want you to comment on this:

These bans have been in place for some time and the effect of these bans is that the work on these very important projects has been delayed and if these bans are not lifted the completion dates will be delayed significantly which is, obviously, of great commercial concern to both the developers and the builders. But, more particularly, it is of great concern to my member, Maxim's, because they are facing liquidated damages which will be up to $10,000 per day if they can't meet the completion dates that they have agreed in their contract with the builders.

He went on to say:

The bans are in support of a requirement by the Electrical Trades Union to have Maxim Electrical appoint an employee who would then be elected as a shop steward at one of these sites.

The three sites went out just because one shop steward at one site was not appointed. Is that correct?

Mr Birkett—They did not go out, but there were bans placed.

Senator JOHNSTON—Bans were placed; no work was done.

Mr Birkett—No, there was work done but there were bans on certain types of work.

Senator JOHNSTON—Certain types of work that effectively stopped the whole project.

Mr Birkett—Started causing us concerns that that was going to delay the project.

Senator JOHNSTON—Thank you. He went on to state:

The situation for Maxim is that at the moment they don't require any more employees so there is no need for them to appoint anybody extra to their staff.

So the union was dictating to you who you employ, is that correct?

Mr Birkett—No. They were dictating under their understanding of the EBA and we disagreed with their understanding of the EBA on whether they could appoint a steward or could not appoint a steward.

Senator JOHNSTON—You tell me: is Mr Kennedy informing the commission correctly of the situation, or not?

Mr Birkett—At the time he was informing the commission of the way we believed the situation was.

Senator JOHNSTON—The union wanted you to employ a person.

Mr Birkett—Yes.

Senator JOHNSTON—Mr Birkett, does your company get told by anybody who to employ?

Mr Birkett—Not told; we would be asked, and that is how this came out. They were asking us to take on a certain steward.

Senator JOHNSTON—And they asked you very nicely, 'Please take on this man,' and you said 'No,' and so they imposed the bans.

Mr Birkett—We gave our arguments as to why. They then turned around and said, 'We need to resolve this.' The negotiations failed. They flexed their muscles a little bit. We went to the commission. We then went back and we were able to sit down and negotiate again, and we were able to resolve it.

Senator JOHNSTON—They flexed their muscles because you failed to employ someone they told you to employ.

Mr Birkett—For want of a word, yes.

Senator JOHNSTON—Do you think that is normal in this industry?

Mr Birkett—It is a lot better than it used to be.

Senator JOHNSTON—Yes.

Mr Birkett—As I say, we did fail—and the commission made that clear—we did not follow the procedure exactly. I now know the procedure a lot better. Like I say, there was that one instance where it did get a little bit push-shove and we ended up going to the commission. But once we got to the commission we were able to sit down and negotiate again. I am quite happy with the result.

Senator JOHNSTON—Mr Kennedy informed the commissioner that the bans were clearly in breach of the enterprise agreement. That was the case, was it not?

Mr Birkett—Going by what Frank was telling me, yes.

Senator JOHNSTON—Thank you. There was a dispute settling procedure contained in the enterprise agreement 2003-05, and Mr Kennedy alleged that the ETU had not abided by the dispute settling procedure.

Mr Birkett—That was his argument of our defence, yes. But, as I say, it did come out that we had not followed the procedure exactly ourselves.

Senator JOHNSTON—Let us just go through what Mr Kennedy says, because your company is being forced, through the imposition of bans, to employ someone. That is what it distils down to.

Mr Birkett—That was his argument, yes.

Senator JOHNSTON—He says to the commission:

Clause 12 is the dispute settling procedure clause and it is clause 12.2 in particular … is safety disputes.

He went on to say:

And that will all happen within seven days. And at the end of all that the matter would be referred to this Commission for resolution and while all that is happening the agreement says that work will continue as normal prior to the dispute arising.

Do you understand what that means?

Mr Birkett—Yes.

Senator JOHNSTON—So the terms of the agreement said that where there is a dispute, work will continue as normal. That was the agreement.

Mr Birkett—Yes.

Senator JOHNSTON—Work did not continue as normal, did it?

Mr Birkett—Not 100 per cent, but we were able to continue.

Senator JOHNSTON—You had bans imposed.

Mr Birkett—We had some bans imposed, yes.

Senator JOHNSTON—Accordingly Mr Kennedy, I daresay quite correctly, said to the commission:

And we say that the union is in breach of that clause of that agreement.

He then proceeded to read out the various clauses that deal with the appointment of a shop steward. The agreement deals not one jot with the employment of people who will then become shop stewards, as I see it, unless there are other terms and clauses. The commissioner, in response to the interpretation of that clause by Mr Mier, who was acting for the union, said:

Well, are you saying … this clause means is that no work can commence until agreement has been reached?

Mr Mier says:

Well, that is the way I certainly read it, Commissioner.

Then the commissioner says:

Well, I would think that would be the greatest load of nonsense I ever heard, Mr Mier, but anyway, go on.

Is this an industrial climate that is effective and efficient, Mr Birkett, when I read all this out to you?

Mr Birkett—As I say, both sides were trying to portray—we were trying to get our point across; the unions were trying to get their point across. We ended up going to the commission, like I said earlier. There were parts of the procedure that we had not followed. The bans were not affecting us dramatically but, in time, if we did not get the bans lifted, they were seen—that is why we were talking abut not finishing these jobs on time. What we were trying to do was a get a resolution one way or the other so that we could sit down and finalise this thing because there was no point in letting it drag on.

Senator JOHNSTON—What was the total value of the electrical work on each of those three projects?

Mr Birkett—I am not quite sure of your question.

Senator JOHNSTON—Take it on notice, please. What was the total value to your company of those three projects?

Mr Birkett—What the jobs were worth?

Senator JOHNSTON—What the jobs were worth, and what the exposure to you as the electrical contractor was in terms of liquidated damages for the three sites.

Mr Birkett—I cannot tell you what Caroline Springs was because I do not know what the liquidated damages on that job were. I believe that Concept Blue was $10,000 a day and the Condor project we had only just started. We actually had not signed the contract on that at that stage, and I believe the liquidated damages on that were about $5,000 a day. The value of the project was, for Concept Blue, roughly $5.5 million—electrical. For Condor it was roughly $3 million. For Caroline Springs, I am not sure but I think it was a bit over $1 million.

Senator JOHNSTON—What other disputations has your company had with this union in the past 12 months?

Mr Birkett—There was your odd problem on-site. We had an issue on Concept Blue where painters had come through and sealed the floors and there were fumes. The painters were working on night shift and fans were left on to suck the fumes out so that when the crews came in during the day, there were no vapours or anything like that. Unfortunately, the night before the main board tripped out. A surge came up the line, we believe, and it tripped out the main board and the fans did not work, so it was very fumy. Under the procedure it was not safe for them. Under occupational health and safety, it was not very safe for them to be there because it was very fumy. I was one of the guys who went through to get the power back on the board. By the time we were able to clear the fumes et cetera it got to a point where the site needed—the unions asked and I agreed, because there were a few people who did get sick from the fumes—a tester to come in and test the fumes to make sure that there were no fumes there that were going to cause problems.

Senator JOHNSTON—But that is legitimate, is it not—legitimate action?

Mr Birkett—Yes.

Senator JOHNSTON—It is illegitimate action I am talking about.

Mr Birkett—I cannot think of any.

Senator JOHNSTON—No bans imposed, no work to rule, no nothing, except for this one.

Mr Birkett—Except for this one that I have just said.

Senator JOHNSTON—I have a lot more questions for this witness, but obviously I am out of time.

Senator MURRAY—Mr Birkett, have there been occasions when you have thought it might have been useful to have a regulator or inspector, a third party, available to you where there are problems of this kind? It seems to me that if you do not resolve it directly through the union or the employer processes, you have to go all the way to the Industrial Relations Commission with the expenses and the time that that takes. Are there circumstances where you would have liked to have called a regulator onto the site to resolve a particular issue there and then?

Mr Birkett—No, to be honest. Except for this one issue, we have been able, through negotiation usually with the steward and sometimes we have had to bring in the organiser, to

resolve any differences that we have had on the job. If it has been a safety issue, we have got the likes of WorkCover inspectors we can bring in to get a resolution.

Senator MURRAY—That is a regulator; that is a third party.

Mr Birkett—Yes. We have used that. There was a project where, under the Occupational Health and Safety Act and the temporaries code, we were unable to get the temporaries to that area of the site, as per the act, because of the way the project was built; the way it was architecturally designed. So we called on the services of Alan Mulvena of the ETU, who is their safety representative, to get his clarification on how we could do it. Between Alan and myself, we both turned around and said, 'We really do not know how we are going to get this.' We looked at a solution to that problem through negotiation, and that involved the chief inspector of the electrical industry. He came out, viewed the site, gave a ruling on it and gave us dispensation under the act so that we could actually continue through. So in that process we had a WorkCover inspector come out as well to get his understanding of the act. That whole process worked well and there was no lost time on the job.

Senator MURRAY—That evidence says to me that there are times when using a third party, like a WorkSafe inspector or an electrical inspector—

Mr Birkett—Safety processes are there now for us to use.

Senator MURRAY—It actually helps to resolve the particular issue.

Mr Birkett—Yes.

Senator MURRAY—The bill is criticised because it is industry specific, but it is not only industry specific; it is specific to just one part of the industry. What is left out of the proposals is what I have heard described, in a somewhat ugly way, I might say, as the cottage industry—the housing and residential construction industry—where tens and thousands of employers and contractors and tens of thousands of workers are. Does your firm do work in the residential construction industry as well as in the central business district high-rise area?

Mr Birkett—We do not do house work, or whatever you call it—like general housing or anything like that. We do major projects like shopping centres, picture theatres, commercial buildings and high-rise apartments.

Senator MURRAY—So in your long experience in the industry, you have never worked in the residential construction industry?

Mr Birkett—No.

Senator MURRAY—When you have these joint meetings that you have described with people in your sector, do the people at those joint meetings work in that sector?

Mr Birkett—I could not comment. I do not know.

Senator MURRAY—The reason I am asking is to find out whether there are major differences that you would see. Let me give you an example. A lot of the evidence from the unions and representatives of organisations for the unions, such as the Australian Council of Trade Unions, is that there is massive avoidance of entitlements payments, tax and cash payments and there are all those sorts of problems within the building and construction industry. I would find it very hard to believe that if those practices exist in the commercial construction sector they do not also exist in the residential construction sector. I would find it strange. What I am looking for is whether there are reports to you of problems which are common right across building and construction, and not just that area that is the subject of this bill.

Mr Birkett—As far as I know, we are all paying the Protect; we are all paying the super that we have to pay.

Senator MURRAY—Did you hear the evidence of the Construction, Forestry, Mining and Energy Union Victorian secretary, Mr Kingham, that his organisation had recovered around about $10 million, I think it was, in entitlements and dues that should have been paid over an 18-month period?

Mr Birkett—No.

Senator MURRAY—It is a fact that the unions do recover entitlements that have not been paid, and that is the evidence to us across the country. Have union officials said they discovered in your own company that you have not paid entitlements or you have not paid taxes?

Mr Birkett—No, we have always paid our tax. Each month after we have made our contributions to the super scheme and Protect, our payroll girl, Samantha Tickner, sends a copy of the individual's name and how much has been allocated to him as far as super and Protect. That goes out to all the stewards so that the stewards can check the guys on their sites to make sure everyone has been allocated the funds that they are due.

Senator MURRAY—Your evidence is that you are the fifth-largest firm of your kind in Victoria or in Melbourne. If you are doing the right thing—paying tax as you should, the rates you should and the entitlements you should—what effect does it have on your business if one of your competitors is not doing that?

Mr Birkett—I do not know. Like I say, as far as I know, everyone is paying it because I know we supplied this to the unions and I believe that everyone we compete against is doing exactly the same thing. I know that if we want to bring subcontractors in and everything else, the first thing we ask is, 'Give us your proof of payments to make sure that your guys are protected with super and protected with insurance and everything else.' We make sure everything is up-front. We ask our subbies that anyway, and that is all passed on to the union. As far as I know, everyone is paying it.

Senator MURRAY—I believe the evidence that has been given to us by the unions is that those funds have been audited. Those funds have been disbursed. The tax office is aware of the issues, and so on. It seems odd to me that in this circumstance where moneys of that kind—it is a huge amount of money, frankly: $10 million—are recovered there are no competitive repercussions to your business as a result of an employer not paying their dues. If somebody is

not paying their profit dues, it means that they can undercut your prices and get an unfair competitive advantage. The unions have very clearly indicated that that is a consequence of people not paying entitlements, yet your evidence here is that you have never heard of any such thing and everybody is paying.

Mr Birkett—I can only comment on the projects we work on, which are fairly large major projects within the Melbourne central district and outer areas. Before any of us start on those projects, that information is passed on to the unions to show that our guys have been paid up-to-date and everything else. It is no different for us than it is for Pratts or D&E Airconditioning that are on the projects. Those documents are produced on a monthly basis to show that everything is being paid when it should be being paid.

Senator MURRAY—You see, I am not alleging that you are not paying, Mr Birkett.

Mr Birkett—I can only comment on the jobs that I know of.

Senator MURRAY—What I am saying is that the union evidence is that others are not. Surely you would know whether that has an effect on pricing and in competition?

Mr Birkett—The people I compete against, no, because we compete against the same size contractors as ourselves who are working on similar types of jobs and are producing the documentation on a monthly basis, the same as us, showing that these payments have been made.

Senator MURRAY—I had better put the question, if I can, through the Chair. I wonder whether the secretary could write to the CFMEU in terms of that earlier evidence and find out what category of employers are not paying because the evidence here seems to indicate that there is a different category.

CHAIR—Mr Kingham, do you understand the question?

Mr Kingham—Yes, I do.

CHAIR—Thank you.

Senator MARSHALL—I would like to direct this question to either of you, Mr Birkett and Mr Dixon. It follows on from what Senator Johnston was asking about the dispute and the union asking you to engage a shop steward. I think it is a good question to ask both of you because my understanding is that, in giving your evidence, you both are electricians who started with an apprenticeship. Obviously before you were running the businesses you now run you worked on the tools and experienced the industry. The question is: do you understand why the union asks you to employ shop stewards? Do you understand the background for that?

Mr Birkett—Yes.

Senator MARSHALL—What is it?

Mr Birkett—The way I see it is that, in the early days, a steward would be picked from the floor or whatever else. He had no experience and he would be sometimes very difficult to control because he did not know the processes that he should. The stewards that the unions are negotiating with us to put on are getting some assistance with the way they should behave on-site and everything else. As I said earlier, there is definitely a lot less unrest than that there was 10 years ago, and part of that is, in my belief, that the right type of person is being picked for that job, like you would pick a certain person to become a leading hand. A certain person becomes a steward. He is there not only to see that the job flows but also to ensure the health and safety of his members. He also takes on, for want of a word, a management role as well. He is there to ensure that everything is in place. Our stewards work well with us.

Senator MARSHALL—So it is really on the basis that someone with the right skills and the right understanding and information from the union has the confidence to make sure that the job is managed from a union point of view, as well as in an appropriate manner.

Mr Birkett—Yes, more harmoniously, as well. In the early days you could get a certain individual come up and the power goes to his head: 'I am a steward now and I am untouchable, rah, rah, rah.' He can cause a lot of problems. Nowadays the unions give their stewards training. They have stewards coming to meetings and, to my knowledge, they are told: 'This is the procedure with the EBA now. If there is a dispute, this is what you follow.' This is instead of saying: 'Right, everyone down tools! Out the gate,' and you have lost a day. There are now procedures and the stewards are taught the right way to approach any dispute or any disagreement on-site. More than nine times out of 10 you do not lose time on-site. If there is an issue that happens about safety, rather than down tools and get out the gate now, that area is barricaded off and production continues. There is a lot less downtime, there is a lot less lost time, than in earlier days.

Senator MARSHALL—That is one side. I ask either of you this question in terms of not running your companies but being people who have worked in the industry. Are you aware from time to time of people who have been active unionists being discriminated against for employment opportunity within the industry as a whole? I am not suggesting that your companies or you guys have individually done it, but are you aware generally in the industry that people may be discriminated against for union activity?

Mr Birkett—No.

Senator MARSHALL—Mr Dixon?

Mr Dixon—Sometimes I have read about it in the papers, but that is about it.

CHAIR—Thank you, Mr Birkett and Mr Dixon.

[11.47 a.m.]

MIER, Mr David, Organiser, Southern States Branch, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU)

MIGHELL, Mr Dean, Secretary, Southern States Branch, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU)

CHAIR—The committee prefers all evidence to be given in public. However, it will consider any request for all or part of your evidence to be given in camera. The committee has before it submission No. 119. Are there any changes or additions that you want to make to the submission?

Mr Mighell—No.

Mr Mier—To my knowledge, I would just like to make one brief change to the last sentence, which states, 'The City Link project is not atypical.' There is a typo there. It should state that the City Link Project is not typical.

CHAIR—Mr Mighell, do you wish to make an opening statement?

Mr Mighell—I am very conscious of the fact that this Senate inquiry has been exhaustive; and has gone right around the country. I do not want to be repetitive and I will try not to go over too many issues that others have covered. I will try to keep my comments specific to my knowledge predominantly in Victoria. What I really want to focus on in the brief opportunity I have is pattern bargaining. In Victoria, it has been my union's experience—and I have been directly involved with it—that since the introduction of enterprise bargaining in 1991, our members, our industry and our employers were unable to come to grips in any way, shape or form with the concept of enterprise bargaining. That is a stark contrast to the manufacturing industry where for decades we have successfully enterprise bargained. They are unique, stand-alone enterprises. Labour is not the biggest cost component of their business whereas in the electrical contracting game we have always been employed under paid rates awards—certainly for decades.

The significance of paid rates awards, before they were dismantled by the Howard government, was that they provided a level playing field. The rate stipulated in the award was the rate you received, and I suppose when enterprise bargaining came in, the industry was in a flat spin about how it would otherwise deal with that. What we saw was a total inability for three years for anyone in this state to reach an agreement. It was only when the union advocated the concept of a pattern agreement in the industry that we were able to reach agreement with employers. We were able to do that on the basis—and employers told me quite specifically—of no better, no worse than any other contractor. 'No better, no worse'—those words were insisted upon by the National Electrical Contractors Association on behalf of its members, and contractors were willing to enter into an enterprise agreement with us, provided it was identical

in its rates and pay and conditions as for other employers. We have now been through five rounds of that style of agreement. In our last round of agreements over a three-year period there were 1,200 agreements entered into and certified before the Industrial Relations Commission in Victoria in predominantly identical terms.

The union's process was to write to every registered electrical contractor in the state of Victoria, of which there are 7,000. Some are non-practising, some are self-employed, some are small contractors and some are large. Of the 7,000 that we wrote to, seeking to reach agreement with them, we had two responses from employers seeking or wishing to have individual enterprise discussions—two responses. They were quite trivial enterprise-specific matters in the overall scheme of things and we were able to incorporate those specific things within their agreements. In fact, when we sat down with the National Electrical Contractors Association for the fifth time to negotiate an industry agreement, we were able to say that there was the ability for a company to raise enterprise-specific matters. That is well known; in fact, there were only two companies that came forward wishing to raise anything specific about their enterprise. I think one, from recollection, was about employees keeping their cars clean and washing them on the weekends, or whatever the case may be. There was nothing significant.

I guess the real point is that there is a high level of acceptance and a higher demand from both employers and employees in our industry for the need for a level playing field. Previous witnesses operate in this industry. The reality is that if they have to compete against employers that are not paying proper entitlements, that are not bound by a pattern agreement, they will be severely undercut. If we were to truly implement the sorts of models that the government proposes to implement and outlaw pattern bargaining—and I understand yesterday Mordy Bromberg and others spent some time on the International Labour Organisation conventions—and move to what is commonly called in the industry a catch and kill approach, realistically to go from employer to employer and bargain, the outcome would be absolute mayhem.

You would have the ability for the union in some circumstances to achieve a 20 per cent increase over three years with some companies and the ability to receive a five per cent increase, maybe, in other companies over a similar period, all dependent on the work that they have got on at any particular point in time and the industrial circumstances that exist. It would encourage absolute warfare. They would make the best of it on the employer's part that they could and we would make the best of it that we could, and the industry would plunge in the mayhem. You would have employees on completely disproportionate rates of pay, and you would have some contractors that we were able to reach agreement with because of our industrial leverage at the time put out of business. They would not be able to continue to exist.

Contractors do not make a whole lot of money in this state. There are some good profitable companies, there are some very smart companies, and there are some innovative companies that do exceptionally well, but if we make it a free-for-all in industrial relations, you will have constant conflict rather than three years and then an enterprise agreement being renewed. I think that to date we had 800 agreements certified just in the last round of bargaining that ended up last year—800 have been certified so far. I understand that the other unions, the CFMEU and the CEPU Plumbing Division, collectively have probably reached agreement and certified thousands of agreements with the Industrial Relations Commission.

In this state we say with some pride that we did not even lose a day's pay, not one of us, to achieve those agreements. We think that is a remarkable effort. If there was a model of industrial relations and how it ought to be done, we advocate that. We think it was an outstanding outcome and bit of maturity for the industry. Any threats to dismantle that would plunge this industry into continual warfare that is going on from time to time. There are companies in dispute on any given day of the week on any particular project. You have electricians—the National Electrical Contractors Association—in dispute, off the job, taking legitimate action for an agreement. One day that gets resolved, the next minute the plumbers have gone, and the next minute there is no concrete because they are in dispute. You would just ruin our industry, and we urge you to reject that notion. Our industry is too important. Our industry is a good one and it is one that demands sensible industrial relations outcomes. I think in Victoria we definitely have that. I will focus just a little bit more on the question of shop stewards. It is something that I wanted to speak on and that is obviously of interest to this inquiry.

Our shop stewards are of critical importance in this industry. I know members who have been active shop stewards in years gone by, probably more so since our new team took over leadership of the union in 1995. We were not an active union and anyone who was a shop steward would or could go for 12 months. I know people who have had a period of unemployment for legitimately standing up and representing their fellow workers on a job. I do not know whether there is a black-list—I cannot prove that—but I can prove that people who have been shop stewards for us in the past would endure long periods of unemployment. They are ordinary workers who come in conflict with their employers over legitimate employment related matters and they are discriminated against. It is difficult to prove, though we have taken some of it to the courts—federal courts and commissions—for resolution. It is a long-winded and expensive process but we do that and have done so successfully. But more often than not now we have tackled that very problem by making sure that the industry pattern agreement that we and the employers association reach has very specific measures about that.

Senator Johnston was asking previously about that very matter. The fact is that some companies do not—it takes some time to get used to enterprise agreement forces. We have a requirement that we sit down and we work out things like shop stewards, health and safety representation, who it will be, how it will be done effectively, and we do that prior to jobs starting—for the very reason that the issues of dispute that were subject to the last witness do not occur. We do that so that we resolve these things prior to the job starting so that there is certainty for the employer and certainty for the employees. That is the meaning of the very intent of the clause that we negotiated—to avoid industrial disputation. I would say that in the overall scheme of things we really are at an all-time low in industrial disputation, given the number of agreements we have out there, the number of unionised employees, and the fact that work is still booming in Victoria. We have not discouraged investment, and it is going very well. I think that all evidence points to Victoria being a case of industrial relations that we are enormously proud of. We do not very regularly have lost-time disputes any more.

We are getting our enterprise agreements right and we are getting our industry understandings right. We have our own disputes board that operates very well, so I think there is maturity occurring and I think in Victoria all the other unions are in the same position as us. We have a good industry, and it is only getting better. The only thing that will affect us is any downturn in work long term, and that is talked about in the years to come. We are mindful of that. But our industrial relations situation is very, very good.

The only thing I mention before I close is that during the royal commission, among the enterprise agreement process there was some criticism of the union by NECA in negotiating insurance premiums in the industry. We have, through our industry pattern bargaining—and one of the great aspects of our agreements is that it has now come to be known and accepted by employers—an insurance scheme via the protection and severance scheme. It is underwritten by a company called IUS.

The allegation against the union was that in fact it did not declare it makes commissions from this insurance. That is absolutely not right, and we stand by the fact that it was well and truly declared. The union does receive commissions. We understand that NECA in New South Wales—the actual contractors in New South Wales—has similar insurance contracts it offers its members. I do not know about the level of its declarations, but I do not see them very publicly. For us, we have always been up-front about our dealings. In fact, since the royal commission and since complaints about that very insurance product, they have willingly and gladly entered into enterprise agreements again that contain exactly the same thing. It is an extremely competitive premium.

Despite the royal commission protests, they were all too quick to jump on the bandwagon again the next time round because they simply cannot beat the price that the union collectively brings that product to the table for. We are very proud of our achievements in Victoria. We went through the royal commission. I think I spent three days in the witness box and other officials spent time there, but there was not a finding of any criminal conduct of us. There is not any criminal conduct in Victoria, at least not on behalf of the unions. I think the commission found some, but certainly not on behalf of us. I think I will leave my oral submission at that. I have tried to encompass many other important issues within the concepts of my formal, written submission.

Senator JOHNSTON—Mr Mighell, I take it that you and your executive consult your membership very intensely as to their views on work terms and conditions.

Mr Mighell—Yes. If we are going to enter into an enterprise agreement process, we probably start about 12 months out, sending out to employees and asking how their existing agreement is going and what they want in the new one. We then have shop stewards meetings which are part of our industry to get further feedback and we develop our proposals based on their views.

Senator JOHNSTON—You take those views on board and you seek to negotiate and adhere to them in the process.

Mr Mighell—We debate them out to really gauge their merit. Probably shop stewards forums are very important for us to do that. Not every idea gets run with, but certainly there would be some that we would come down to or narrow down to being realistic claims that are very important.

Senator JOHNSTON—You seek, by and large, to act upon the views and wishes of your members?

Mr Mighell—Yes, of course.

Senator JOHNSTON—Would you call the CEPU electrical division a militant union?

Mr Mighell—It depends on the definition of 'militant'. We are a strong union.

Senator JOHNSTON—Yes.

Mr Mighell—We take lawful industrial action to pursue our claims where we need to. I suppose we have not had much recourse in recent times, but it all depends on your definition of 'militant'.

Senator JOHNSTON—'Militant', I would say, is acting outside the existing industrial relations legal framework.

Mr Mighell—No. I do not think we are back to that side. We have really tried very hard to stay within that. I probably go to the biggest task we faced, which was renewal of our 1,200 certified agreements. We have done without any lost time, so I think we have been pretty good. 'Militant' outside of the lawful stuff, no, I do not think so.

Senator JOHNSTON—Mr Mier, you have an EBA with Maxim Electrical Services. Are you familiar with that dispute that you had earlier in the year that you might have heard me talking about?

Mr Mier—Yes, I am familiar with that.

Senator JOHNSTON—Was it you who appeared with Mr Kennedy in the commission?

Mr Mier—I did not appear with him, but I was there, yes. I was not appearing on behalf of NECA. I was appearing on behalf of the ETU.

Senator JOHNSTON—The CEPU electrical division, I think you told the commissioner. I am looking at the transcript.

Mr Mier—Yes.

Senator JOHNSTON—Are you familiar with and do you understand the terms of the EBA that is in existence between—or was in existence and I presume it still is—the company Maxim Electrical Services and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia?

Mr Mier—I do not have a copy in front of me.

Senator JOHNSTON—In clause 3.1 through to 3.2, it talks about prior consultation being 'essential between the company and the union in regard to work on major construction projects to ensure that industrial relations is conducted in a manner consistent with this agreement in the interests of the parties'. It refers to a list of things that will be included. I do not have a copy of the things to be included, but that is all right because I do not think it is important. It goes on to say:

It is the objective of the parties to consult and agree on the above matters prior to commencing work ...

My question is this: is there anything in that agreement that sets out that the union can stipulate who should be employed by the company?

Mr Mier—I have the full, complete clause in front of me, Senator. It reads:

The matters to be discussed shall include but are not limited to the following: employment of apprentices, conditions of employment on site, the employment of women and older workers, local labour for work in regional areas, shop stewards and occupational health and safety representatives, hiring of labour in addition to the company's existing work force, sourcing of electrical equipment and materials and site amenities. It is the objective of the parties to consult and agree on the above matters prior to commencing work in an attempt to ensure that industrial disputation is avoided.

Senator JOHNSTON—I appreciate that and I thank you for that. The reference to 'shop stewards' does not talk about the employment of people; it talks about shop stewards. The reference to 'shop stewards' does talk about the employment of shop stewards, does it?

Mr Mier—It talks about shop stewards.

Senator JOHNSTON—It is a simple reference to shop stewards.

Mr Mier—You have got the transcript in front of you, right? I am assuming you have read it. You understand what the whole dispute was about and if you want me to go into that, I will.

Senator JOHNSTON—No, I am just asking you questions about shop stewards. I want to know whether you believe that the agreement entitles the union to tell the company whom it shall employ with reference to shop stewards.

Mr Mier—Absolutely.

Senator JOHNSTON—I appreciate that. But do you also believe that the agreement enables you to have the company employ a person to be a shop steward on terms and conditions to be agreed between the union and the company?

Mr Mier—I do not know what you mean by 'terms and conditions'.

Senator JOHNSTON—Pay rates, those sorts of things.

Mr Mier—They would be contained in the enterprise agreement and they would be rates that everyone cops.

Senator JOHNSTON—On your understanding, this agreement says that you can stipulate whom the company shall employ as a shop steward and at what rate he will be paid.

Mr Mier—What it says, Senator, is that is—

Senator JOHNSTON—I would rather have your understanding.

Mr Mier—My understanding is exactly what the enterprise agreement says: there are classification structures in the enterprise agreement that set out rates of pay and the rate is the qualification the member holds. If he is an A-grade electrician, he is a grade 5.

Senator JOHNSTON—You never negotiate a shop steward's position other than on the set scale in the agreement?

Mr Mier—That is correct. I think I know where you are trying to head here. You are trying to say that we do some special deal for a steward. That is what you are trying to say. That is categorically not it. An electrician is an electrician. He has qualifications, he goes through training, and the training sets out the standards he has. If he is qualified as a special class electrician, he will be a grade 7. If he is just—not 'just'—an A grade, he is a grade 5. There are no house deals for extra money for stewards.

Senator JOHNSTON—This agreement, to your understanding, says that you can tell the company whom it shall employ as a shop steward.

Mr Mier—We have discussions about who will be the shop steward on larger jobs, as in that clause.

Senator JOHNSTON—In this instance, you told the company who was to be employed. You had discussions with them. I think Mr Birkett said there were discussions.

Mr Mier—That is correct.

Senator JOHNSTON—You told the company who was to be employed and they said, 'We do not have a vacancy for that employee.'

Mr Mier—If we are going to go to this specific dispute, I will turn to the whole dispute, right? The dispute is that there was an agreement between Maxim Electrical and us, the electrical trades union, on the bloke who would go on the job. It was agreed.

Senator JOHNSTON—It was an oral agreement, was it?

Mr Mier—It was an oral agreement. That is an agreement, mate.

Senator JOHNSTON—Who were the parties to the oral agreement?

Mr Mier—Me and Rob Minney, who is the managing director of Maxim Electrical. The builder, Bovis Lend Lease, then stuck its nose in and said, 'No, we do not want you employing that bloke.' They have stuck their nose in, and obviously Maxim is not going to come out and say that.

Senator JOHNSTON—Why did they say that?

Mr Mier—No, they will not.

Senator JOHNSTON—Do you know why the builder or the owner of the site—and the project developer—said that he did not want this particular person employed?

Mr Mier—It was the builder; it was not the project developer.

Senator JOHNSTON—It was Lend Lease that said, 'We do not want that bloke.' What was the reason for that?

Mr Mier—From time to time, builders get these strange ideas.

Senator JOHNSTON—You know what the reason was. Tell us what the reason was.

Senator MARSHALL—Let him answer the question.

Mr Mier—Builders get these strange ideas that they want to pick who gets employed on the job. They do not leave it up to the contractors. The contractors work with the unions on a number of sites. We have healthy relationships with the vast majority of our contractors. By the builders sticking their nose in, they only frustrate the whole process.

Senator JOHNSTON—The question was a simple question, Mr Mier. What did Lend Lease fear about the person being put forward as a shop steward?

Mr Mier—I do not know, Senator. You would have to ask them.

Senator JOHNSTON—You are telling us that you have no idea what Lend Lease's complaint was. You are seriously telling us that?

Mr Mier—I know what I know. Lend Lease would not admit that they were putting their hand up Maxim's back, but it was common knowledge in the industry that they were.

Senator JOHNSTON—Why were they doing that? Do you have any idea?

Mr Mier—You would be best to ask Lend Lease. I cannot speak on their behalf.

Senator JOHNSTON—Lend Lease are not here today. You have no idea? You cannot help the committee?

Mr Mier—I do not know why. They would have some perception, I assume, on the individual involved.

Senator JOHNSTON—Had the individual been involved in any industrial action in the past?

Mr Mier—The individual involved has been an organiser for the electrical trades union in the past.

Senator JOHNSTON—Has he been involved in any industrial action in the past?

Mr Mier—I think if you could assume that he was an organiser, he would have taken part in plenty of lawful industrial action.

Senator JOHNSTON—And was that industrial action with Lend Lease?

Mr Mier—It was with a plethora of employers. I would not know. You would have to ask the individual if he has had blues with Lend Lease. On the face of things I would probably suggest that the answer would be yes.

Senator JOHNSTON—Right. Lend Lease had already stuck its nose in. Minney was overridden by the builder.

Mr Mier—He was dictated to by the builder, yes. Obviously, you have to understand why the builder, Maxim, could not come out and say that—because the next job they would go to, they will not be on the tender list. They would be discriminated against.

Senator JOHNSTON—It is true, is it not, that regarding the way you read the agreement between the union and Maxim, the commissioner said when you told him the way you wanted to interpret the agreement:

Well, I would think that would be the greatest load of nonsense I ever heard, Mr Mier, but anyway go on.

He said that, did he not?

Mr Mier—It is on the transcript, Senator, so obviously he did.

Senator JOHNSTON—All right. There is a dispute resolution process in the agreement, is they are not?

Mr Mier—In every agreement, there is. That is part of the act, is it not?

Senator JOHNSTON—The bans were imposed on three sites; correct?

Mr Mier—That is what the allegation is. I think that commission hearing was adjourned. There was no finding.

Senator JOHNSTON—Bans were imposed on three sites, notwithstanding that there was a disputes resolution procedure.

Mr Mier—There is a disputes resolution procedure in the agreement.

Senator JOHNSTON—Clause 12.

Mr Mier—Right, so you know. There is a disputes resolution procedure in the agreement. There are also other clauses in the agreement. As I identified to you, there was an agreement made with the electrical contractors and the union, and until Lend Lease stuck their grubby nose in, everything was going along smoothly.

Senator JOHNSTON—The agreement was an oral agreement that you had with the contractor to employ this particular person.

Mr Mier—Correct.

Senator JOHNSTON—When you executed the bans, the bans were against Mr Minney and Maxim.

Mr Mier—There are allegations of bans in there. I do not think there has ever been—

Senator JOHNSTON—I am going on what Mr Kennedy told the commission. Do you dispute what Kennedy told the commission about the bans being in place on most three sites? Do you want me to read the sites out to you?

Mr Mier—Yes, go.

Senator JOHNSTON—The sites were Condor apartment construction at Docklands.

Mr Mier—Yes.

Senator JOHNSTON—Caroline Springs in the western suburbs and the residential development called Concept Blue in Russell Street.

Mr Mier—Concept Blue is the old Russell Street police headquarters. The Condor is where the individual involved is currently working now for Maxim.

Senator JOHNSTON—Were the bans imposed on those three sites?

Mr Mier—There are only allegations of bans. It has not been proven that there were bans and, as far as I am concerned, there were no bans.

Senator JOHNSTON—So there were no bans?

Mr Mier—Caroline Springs is not in my area, so I do not know about Caroline Springs. I do not know what is going on there.

Senator JOHNSTON—Mr Birkett categorically stated that the bans were imposed for a week and a half on those three sites.

Mr Mier—That is what Mr Birkett is saying.

Senator JOHNSTON—You disagree with that?

Mr Mier—It has not been proven on the transcript, Senator.

Senator JOHNSTON—Mr Mier, you do not say that in the transcript. You do not say, 'There are no bans, Mr Commissioner.'

Mr Mier—You have the transcript in front of you.

Senator JOHNSTON—Yes.

Mr Mier—I think you said you did not have the full transcript.

Senator JOHNSTON—Your argument was that you are entitled to tell the contractor who to employ. That was your argument.

Mr Mier—As you identified earlier, Senator, there is an enterprise agreement that we have both entered into. One party has breached the agreement, and it was not us. It was Maxim Electrical that breached the agreement, so to try and paint us as the villains here is completely wrong.

Senator JOHNSTON—But the bans were against Mr Minney. He was the innocent party in all this because the problem was with Lend Lease, was it not?

Mr Mier—Wait a second. I do not know your history, and I apologise for that, but when someone makes a deal and then dogs on it, you do not look upon it too favourably, right? There was a commitment made by Mr Minney that the individual go to that job, and the individual has gone to that job.

Senator JOHNSTON—When Mr Minney said the individual could not go to that job and he could not employ him, you imposed the bans.

Mr Mier—We had healthy discussions.

Senator MURRAY—Mr Mier, I just want to continue with this for a moment and come away from the specific instance to an issue of general principle. Let me start by saying that I accept fully that a collectively organised agreement should apply, and you have to have union officials appointed as stewards to supervise the conduct of that agreement on the job. But the issue here is whether those stewards should be appointed from within the work force, which is on the job, or from outside. That is as I understand it. My question to you is simply: If there is no issue about the appointment of stewards, because that is necessary, does your union tend to impose stewards from outside the job where they are not already members of the work force on that job?

Mr Mier—I think 'impose' is the wrong word. As the clause sets out, and as I said earlier to the other senator, we have a healthy relationship with the vast majority of our electrical contractors. We have discussions before contractors tender for major jobs. They say: 'We are in for this job here. This job is finishing up. We have a steward on this job. How about we swap him over there?' Or if they have a number of jobs going and they have to employ more blokes, we will say: 'There is a job with this mob over here finishing up. How about picking up a few of those blokes? The steward then will be out of work, so how about picking him up?' We discuss all this sort of stuff.

Senator MURRAY—As you know, some people get on with people and some people do not. You have lots of stewards. If in a discussion an employer or a contractor or somebody who is party to the agreement with you said, 'Look, that particular steward and I do not get on,' surely

you would not say, 'You have got to have that steward.' You would offer him another steward. Are you the sort of people who say it is our way, or no way?

Mr Mier—We have discussions, and healthy discussions. We run a pretty disciplined outfit. If there are problems between employers and the stewards, they get us involved—they get the union involved—and we endeavour to fix up the differences. As part of my job I attend construction sites every day. As you can appreciate because you went to one yesterday, there is a vast number of different trades and different employers on the sites and there are disputes from time to time over many things because we are all individuals. So, at the end of the day, we sit down and work it out. There is not much disputation, really, in the scheme of things. A phone call and a bit of a chat and we will get the steward on the job.

Mr Mighell—Senator Murray, as an organisation, quite frankly, a lot of contractors may not have a person with the skills to be a steward or the training to be a steward and a shop steward that is capable of handling that job. Some jobs are very diverse and different in their skills or industrial relations requirements. Some are mechanical engineering construction projects where the health and safety and industrial implications are very different from commercial high rise. Some are in the services sector where they are running around in maintenance vans and their employees are scattered. It tends to be horses for courses, so some companies have not got any. If they have an employee who is a trained, skilled steward, that is fantastic; then, you know, you do not have that.

Some of the companies now in their ranks have actually got one that they keep employed—not always as stewards—but sometimes if a job comes up they know that they have got one skilled in there, so our discussion with them is extremely brief. They will say, 'We have got Andy Demeri who works for us and he has been a steward on these jobs.' We will think, 'That is fantastic. You have already got one.' That is our preference, but sometimes it comes around that they do not have one and we say, 'Here are some stewards that may be available.' Quite often you have a lot of problems with guys not wanting to be stewards because of the repercussions long term, and we just sometimes do not have enough stewards to go round.

Senator MURRAY—I accept that, Mr Mighell, but, as you know, the general allegation both through Cole and around from employers and employer organisations is that in circumstances like these unions—some unions and some officials within unions—are insisting on my way, or no way. The essential question I am asking is: if there was not a steward within the work force who was confident and capable and you offered them Joe and the employer said: 'Listen, Joe and I do not get on. He has a reputation that he is a bit of a troublemaker. I want John,' would you give him John, or would you insist on Joe?

Mr Mighell—I think that every circumstance would be different. You would not insist. Ideally, you would agree, and ideally, most times you do. But there are some instances where you could go back to some people—I could produce them for this inquiry—who have spent 12 months being unemployed for being legitimate shop stewards. Prior to our union becoming much stronger we used to have our members being discriminated against all the time. Companies would employ their own shop stewards and they would not be genuine shop stewards. They would be stewards who would act in the interests of the employer and have no concept.

Employers would manipulate, and still do where they can, to have a shop steward of their own—a company-management oriented steward, rather than a legitimate union steward. We have cleaned a lot of that up, and the industry is accepting that much better now, but it was—and it is, probably—a real problem. You have to balance the things. An employer might simply say, 'I do not like this bloke because his reputation is that he was a militant steward on the Docklands project.' We saw this in relation to the National Gallery of Victoria, which resulted in massive industrial disputation over the question of a steward whom the company, despite having done nothing unlawful and having no findings against him and no commission hearings or convictions, took a bent against and said, 'He is too militant for us.' You get that discrimination going on all the time, and that is a real constant battle. We have to protect people who have been legitimate and good stewards. We do not support those who act outside of a proper, disciplined way of operating. I think our training and the way we have handled things is getting much, much better. I think we are having fewer disputes about stewards than we used to in the past.

Senator MURRAY—You can see the problem that faces the legislator, can you not? Somebody says to you from the employer's side: 'We are having people imposed on us from outside our work force for whom we have not got a job which means that we have to drop somebody to employ that person because of the costings. The person they want to give us we do not want to have. We would accept a steward—of course we will—but this is an issue.' If the unions within the agreement process are handling it maturely and well, we do not have to get involved, but if they are not, what legislative mechanisms can be introduced? As soon as we introduce laws, we get all the problems that go with that. The point of this interaction between us is whether the matters at hand need to be dealt with by further changes in the law to prevent somebody from imposing somebody on a workplace that they do not want.

Mr Mighell—Senator Murray, I think that is real tricky ground. We have tackled a joint enterprise agreement process with our peak employer body. We make sure that we resolve such matters, and such matters can include discussion of an agreement of employing someone with those levels of skills. Quite simply, left to say that the union cannot impose anyone, if you want to use those words, or we cannot put someone up or suggest someone, the companies will simply start to then rely on that and say, 'We object to so and so', without foundation. If you had a bloke with a record of unlawful industrial conduct, I would accept that. But they are not saying that. They are discriminating against people and we are having legitimate electricians and people in our industry who go for 12 months unemployed because they have been a legitimate steward on a job. If employers are faced with a legitimate steward or an employee who will act in their interests, our people will be unemployed and leave the industry.

Senator MURRAY—You are described as a union but to my mind you represent employers as much as employees because many of your members are in fact contractors who employ other people, are they not?

Mr Mighell—Yes, they are.

Senator MURRAY—I wonder just for our records if you could let us know the rough division between those who are truly employees and those employers who are members.

Mr Mighell—I think we have about 3,000 financial members of our union in Victoria that are also registered electrical contractors.

Senator MURRAY—Small business, in other words.

Mr Mighell—Some are small business and some are self-employed, and some of them are acting as employees.

Senator MURRAY—That is 3,000 out of how many?

Mr Mighell—Fifteen and a half thousand financial members.

Senator MURRAY—So, about 20 per cent?

Mr Mighell—Yes. It is quite high. Some of them will be employees and they will chop and change from time to time. We act for them a lot.

Senator MARSHALL—Just before we move off shop stewards, Mr Mier, did you suspect that Lend Lease actually wanted to discriminate against your agreed shop steward under the agreement you had with Maxim because of his union activity? Is that what you suspect?

Mr Mier—Yes, that is what I suspected.

Senator MARSHALL—The union would not accept and does not accept that sort of discrimination.

Mr Mier—That is correct.

Senator MARSHALL—In fact, it is illegal, is it not?

Mr Mier—It is.

Senator MARSHALL—The union does not accept discrimination against any workers, across the board.

Mr Mier—That is correct.

Senator MARSHALL—Mr Mighell, you were elected as the state secretary in 1995?

Mr Mighell—Yes I was.

Senator MARSHALL—Congratulations. I understand you had an excellent assistant secretary.

Senator JACINTA COLLINS—Now we know why you declared your interest earlier.

Senator MARSHALL—When you were elected, was there an electrical industry severance scheme in place?

Mr Mighell—Yes, there was, of sorts.

Senator MARSHALL—What was it called?

Mr Mighell—It was the Electrical Industry Severance Scheme. It was that simple.

Senator MARSHALL—Do you know how that was managed and operated at the time?

Mr Mighell—At that time, it commenced in 1995 but the Electrical Industry Severance Scheme since 1998 has been operated solely by NECA. When we were elected, one of the key issues for us to tackle as a union was to really examine this severance scheme that existed. It was one that was operated by NECA. When I took office I asked the then NECA chief executive officer, Ralph Gwynne, for a copy of the trust deed that underpinned this amount of money. I think it was $8 million at the time. He indicated that in fact the money was not in any trust whatsoever; but in fact it was in a normal bank account of NECA. I could not believe that and I said, 'Do you have a copy of the rules for the fund?' He said: 'There are not, as such, any rules. We just keep it in a bank account.' I said, 'How is any scrutiny applied?' He said, 'It is not.' Obviously, we went into a bit of a flat spin about that because we were concerned about how secure our members' redundancy entitlements can be, sitting in a bank account of anyone—be it an employer association, a union or whatever. There was a massive reluctance to shift that and there was a lot of pressure from our members who were very concerned that we had uncovered that and that it ought to be put into proper trust funds. Since then the union went to get that money—and campaigned very strongly—put into trust funds. Today we have got it in proper industry regulated funds from the pretty dismal setup it was in, which was pretty ordinary.

Senator MARSHALL—Do you say there is genuine prudential control of the funds as they are now?

Mr Mighell—Yes.

Senator MARSHALL—Could you outline how that operates?

Mr Mighell—I am the chairman of what is called Protect, which is the industry severance scheme for electrical contracting. Mr Mier is a director, as is Mr Leane from our organisation. We have a chief executive officer appointed. We have NECA representatives also as directors on that. We are subject to all financial scrutiny. The money is audited now and it is in proper trusts. It is accountable to its membership. It publishes all of its accounts and operates exactly how it ought to. Its investments are scrutinised and it is subject to all of the federal government requirements for such funds. I think the scrutiny has been pretty good; it keeps the whole industry clean and accountable for its members, so I think in that sense it operates impeccably.

Senator MARSHALL—This fund is called Protect?

Mr Mighell—Yes, it is.

Senator MARSHALL—In the royal commission, NECA made accusations against the union that there was no genuine prudential control of Protect. Given the way they managed the scheme when you took office, does their hypocrisy annoy you?

Mr Mighell—It does, actually, in all points of life. It was a pretty appalling fund. I do not know whether we could honestly put our hands on our hearts and say to our members that their redundancy entitlements were all intact when the money was in a bank account. The hypocrisy is ordinary. I think the other aspect to that is that NECA made that allegation knowing that its Victorian CEO and respected members also sit on the same board that they say does not operate properly. It does. It is an insult to our fund and an insult to their Victorian CEO as well.

Senator MARSHALL—Also in the royal commission, the adverse finding against you and the statements that you actually engaged in unlawful conduct were in respect of the non-declaration of the insurance premiums that Protect was receiving from those insurance arrangements.

Mr Mighell—Yes.

Senator MARSHALL—Can you outline how that actually took place in the royal commission? I know you referred to it in your opening remarks, but can you just clarify whether you accept that or not?

Mr Mighell—No, I definitely do not accept the finding. One of the great processes of the evidence brought against us as a union was that we did not have the right to cross-examine. With an opportunity, it would have been fairly easy to disprove the allegations against us. But that was just the whole nature of a pretty flawed royal commission. The process of negotiation with NECA was very clear at the time about industry agreement. The commissions that the union made were well and truly known, and the real thing that underpins the allegations being quite false is that NECA is all too happy to enter into the same agreement again that they complained about. Again, I might just say that the finding is something that no-one has acted on. They would have to suffer some damage, and they have not; all we have done is save employers a few dollars a week per employee.

Senator MARSHALL—So you have not been subsequently charged as a result of those adverse findings?

Mr Mighell—Absolutely not.

Senator MARSHALL—Have you been interviewed by anybody?

Mr Mighell—No, we have not.

Senator MARSHALL—There has been no follow-up whatsoever?

Mr Mighell—No, none.

Senator MARSHALL—It has been put to the committee previously—in actual fact I think NECA in its submission indicates that industrial relations within the industry is really one where employers have no option but to concede every demand placed upon them by the union. Would you say that is an accurate description of industrial relations in this industry?

Mr Mighell—I would say it was Utopia, Senator, but it does not really exist that way. No, it does not, of course. You have to be realistic about your claims. NECA has probably got a little bit better at collectively representing its members interests. It would often go into negotiations completely unprepared and without any great background. In more recent times it has been a pretty tough process of negotiation. We will go at it for months. I think that anyone who is a party to it from the employer's side will know that it is all about getting what is realistically achievable and that there are wins and losses on both sides.

Senator MARSHALL—You say that they willingly re-entered into the arrangements to cover income protection insurance on the basis that it was the best possible deal available in the market?

Mr Mighell—Yes. We know for a fact that NECA examined and shopped around that very same policy and tried to beat it. I think it works out at $15.50 through the collective buying power of the union. I think in excess of $17 was the closest price they could come to it, so they actually came cap in hand saying, 'Can we have that policy back again?'

Senator MARSHALL—I just want to take you to pattern bargaining for a moment. Yesterday the committee visited a building site where we were advised that construction at the site was taking place over a two-year period and that there were another 1,000-odd workers who had worked through the project, with up to 500 at any given time, and that there would be 60 or 70 different contractors working through the system. Given that arrangements and enterprise agreements last for three years, we would assume that two-thirds of those contractors may have had their enterprise agreements being renegotiated through the life of that particular project. The builder had advised us that there was a lock-step approach in terms of one trade following another. They went into some detail about the enormous planning that goes into building these sites—that if you take out one piece, the whole site will stop. How would you actually see the industry moving forward if potentially there were 40 or 50 individual negotiations, separate enterprise agreements, taking place on that one particular project during the life of its construction?

Mr Mighell—If that really comes into reality, it will ruin the industry. We will not be able to build a site if, for example, you are pouring concrete on the bottom level of the construction site, in the car park, and the electricians need to put conduits in, but they are in dispute with their contractor about their enterprise agreement so they are taking protected action—and they are off the job, for example. Then the concreters cannot pour, or they pour and it has to be channelled in later. If the plumbers go out and there are no amenities for workers on-site, the whole site then stops because no-one can use the toilets. You would just have absolute anarchy. It would just be so unworkable, we could not even comprehend it. It would be a nightmare for us all and it would plunge our industry into turmoil. The unions are very conscious of the fact that we now time our agreements closer together because we are as conscious of that problem and the impact we can have on each other's members as well as the builders. I think that we try and make sure we have informal discussions among ourselves all the time to try to make sure that we do have that minimal impact on the industry and on each other. I guess the last rounds of collective pattern bargaining that went through are testament to the fact that we are doing it right. Any change from that and you will ruin this industry. It could ruin the industry.

Senator MARSHALL—On the job that we went to, there could potentially be two rounds of protected action every month throughout the course of that building. It would be a disaster.

Mr Mighell—Yes.

Senator MARSHALL—The electrical contractors from Queensland, who I understand are quite different and separate from NECA, originally submitted that they were opposed to pattern bargaining but then agreed that they would support pattern bargaining, if the bar was low enough. In fact they would support that being applied equally throughout the industry. It was not an in-principle opposition to pattern bargaining; it was one more of opportunism. If we could actually get a race to the bottom through pattern bargaining, that would be something they would support. Do you see the opposition that is now surrounding pattern bargaining as the same sort of scenario?

Mr Mighell—In Victoria, we found out that NECA surveyed their members from the electrical contracting industry. What they got back from the survey was, I suppose, a matter of some disappointment to us. They said that their members did not support pattern bargaining as their first or primary tool of employment regulation. They supported the old paid rates award and that is probably understandable because that is the ultimate level playing field. A lot of the opposition that employers go through is that even though we might come up with a pattern agreement, it is still employer-by-employer to sign up. I think they would just prefer that there were some industry outcomes and automatically everybody was bound, like an old paid rates award—like in the traditional sense. So I think what has happened is that they prefer the award. Second to that is pattern bargaining, and that came out very strongly from their own surveys. Their members very strongly support regulated industry outcomes. The great fear, of course, is the company-by-company specific agreements. So the opposition we have had from NECA is that they accept pattern bargaining, but they also love a fantastic outcome for them.

Senator MARSHALL—One of the other issues that has been raised is the trust that your union has put in place. Can you explain to the committee how that money is protected and how that is accounted for?

Mr Mighell—Yes. The union has established a trust fund. We took a very deliberate decision to do that. While we can have normal and regular funds of the union, we were able to generate additional income through the insurance premium, for example, that we make. Rather than putting it into the general funds of the union, we wanted to put it into a trust for ongoing benefits for our members so that it will live in its own entity. We felt that in establishing a separate trust it was important for our members to know that requirements upon directors of trusts are very onerous and very different. We wanted our members to understand that they were not union funds, but that they were their funds and that the members were the beneficiaries in the long term. Again, it is regulated very tightly by the trust laws that apply. We also as a union make sure that these are not funds of the union, as such—they are funds of the beneficiaries, who are our members—and we publish the results of the annual accounts of the trusts to all our members in our newsletter so it is equally as transparent and open for their scrutiny as well.

Senator MARSHALL—And they are audited accounts?

Mr Mighell—Yes, they are audited accounts. One of the requirements on the trust is that it is probably more onerous than the normal requirements on the union.

Senator MARSHALL—Was the existence of the trust reported to the members of the Electrical Trades Union?

Mr Mighell—Yes. It was something that our members had raised with us many, many times over the years. We probably did not understand them well enough but we made the time in the mid-90s to late 90s to try to find out how they work and get proper legal advice and set them up properly. Our members were already involved as stewards and as councillors, and again through the publications and the ETU newsletter, this is something that we are quite proud of. It is something that we have certainly advocated and we want our members to understand.

Senator MARSHALL—NECA asserts in its submission that the existence of the trusts was not reported to the membership of the ETU. That is not true?

Mr Mighell—It is absolutely not true. It has not been reported to NECA, but it was certainly reported to our members.

Senator MARSHALL—When NECA asserts that the activities of the trust were not reported to the members either through ETU newsletters, annual reports, accounts or in any other form, that is not true either?

Mr Mighell—No, it is not. That was put in a newsletter.

Senator JACINTA COLLINS—Can I go back to the issue of shop stewards in your industry because I think there is that point that perhaps should be highlighted for the committee about the nature of your industry and why you might have special arrangements in relation to shop stewards. Unlike some general industries where workers themselves would determine their shop steward off the floor, which is a relatively simple process because they have a fairly permanent work force that stays in the one location performing certain types of work for years at a time, in your case it is a bit like some of your other arrangements, such as redundancy and other leave arrangements, because of the very nature of the work and how workers move from one site or from one employer to another and then to another. Is that essentially the main justification for why you need specific arrangements for delegates?

Mr Mier—Yes. It is a tricky industry to operate in. The ETU is very diverse. We have permanent employees in manufacturing and power stations that elect their own stewards and they could be stewards for years—decades and all that sort of stuff, as long as they are employed—whereas it is very, very different for members representing construction. Their employment will quite often go for the life of the project. It may be six months or 12 months, but very few go beyond that now with the contract that they get. So it is an itinerant industry and you do have to be mindful of the fact that you very seldom keep employment with one company. Very few of our members stay with the one contractor year after year after year. It ebbs and flows with the work that they win, contracts they win and the projects that they work on. So you do not get continuity. In some instances, some companies are better at consistency than others and they might have some stewards that have been employed by the one company for probably four or five years, which would be an exceptionally good stint.

Senator JACINTA COLLINS—It appears in other evidence from the electrical contractor that Senator Johnston mentioned. At the outset in his initial comments he said that 'we determined' who was going to be a delegate. Anyone with a trade union background understands that it is not the employer who determines who is their delegate, but the workers.

Mr Mighell—We have rules, registered rules, Senator, that allow the unions to appoint. Our rules are quite specific and in my formal written submissions I have addressed that. In an ideal situation we want to encourage our members to be more active, to be more outspoken and to participate more within a union. We would like to think that more of them are going to stick their hand up and be stewards. We are able to do far more now. We are able to protect them more than we did in the past. If we go back to a stage where the union cannot protect them from discrimination, our stewards committees will go from about 70 just in contracting to about 10. It will go back to how it was.

Senator TIERNEY—Are you aware of any organised criminality in this industry, Mr Mier?

Mr Mier—No, not on the union's part.

Senator TIERNEY—Thank you. Are you aware of the allegation of industrial lawlessness which was made in the royal commission?

Mr Mier—Very aware, yes.

Senator TIERNEY—Is this industry, in your view, not shot through with industrial lawlessness, as attested to by some of the witnesses we have received?

Mr Mier—No. I think it is a very good industry.

Senator TIERNEY—What is your definition of 'inappropriate behaviour'?

Mr Mier—Australia playing in Zimbabwe is probably not appropriate, and Essendon playing football. In terms of inappropriate behaviour, I would see standover tactics, violence and criminals being used to intimidate unions into reaching agreements. I think that is terribly inappropriate, like questioning of stewards is inappropriate, underpayment of wages is robbery, and workers getting injured or killed on a job is murder.

Senator TIERNEY—Would 'inappropriate behaviour' include healthy discussions, Mr Mier? Would you just define that term a little further? You spoke about your discussions with the builder in terms of the employment of the shop steward that was objected to by Lend Lease—and you talked about healthy discussions.

Mr Mier—Healthy discussions with the electrical contractors, or the builder?

Senator TIERNEY—I assume you meant with the builder.

Mr Mier—No.

Senator TIERNEY—You referred to healthy discussions several times.

Mr Mier—Yes, with the electrical contractor and, as a matter of fact, the job you went on yesterday is a job where Maxim Electrical are working. As I said before, Senator Tierney, we have good relationships with the vast majority of electrical contractors who have enterprise agreements.

Senator TIERNEY—What does 'healthy discussions' mean? You mentioned it several times.

Mr Mier—Free form, just like we are having now, mate.

Senator TIERNEY—You objected to Lend Lease getting involved after you had a verbal agreement that the shop steward was to be employed. We can assume possibly why they would be objecting: it could be his track record on one of their sites or some other site before. As they are the people who are actually paying for the project, and they would have obvious concerns about disruptions and delays, why did you not think that they were a legitimate party in those discussions? You seemed to think that they had no rights at all.

Mr Mier—We had an enterprise agreement with the electrical contractor. They are the two parties involved in that agreement. We do not have an agreement with Bovis Lend Lease. Our agreement was with the electrical contractor, and the other parties involved. It would be like someone else sticking their nose in where they should not. That is exactly what occurred.

Senator TIERNEY—'Sticking their nose in where they should not', even though they had a critical financial interest in the project. They have no interest in the potential disruption?

Mr Mier—There is no employer-employee relationship between the electrical contractor and—

Senator TIERNEY—I understand that, but they have an interest in the dispute over the employment of this particular shop steward.

Mr Mier—Seeing you are fans of the Workplace Relations Act, I think it is 289K, although I stand to be corrected, which refers to discrimination or coercion, is it not—a third party sticking their nose into something. I would have thought that they would be a case for that.

Senator TIERNEY—The person who is paying for the project hardly has no rights. We were talking about the bans. There were three bans that you were talking about earlier and you kept calling them alleged bans. Did those bans take place? Did it happen? Surely it happened or it did not happen on those sites. We mentioned them. We went through the sites.

Mr Mier—Caroline Springs is not in the—

Senator TIERNEY—You do not have to go through all the sites. I am just talking about the general principle. Did the bans take place or not?

Mr Mier—I do not know.

Senator JACINTA COLLINS—One of them said full bans.

Senator TIERNEY—Senator, I have the floor. The matter is quite clear. We discussed them and they were mentioned before.

Mr Mier—Can you go through that again?

Senator TIERNEY—Why are they alleged?

Mr Mier—The alleged bans you are talking about—

Senator TIERNEY—Could it be because they were unprotected action? Could that be the reason why you are so coy about it?

Mr Mier—I am not coy about it. Can you tell me anything about the bans?

Senator TIERNEY—Are there legal implications for your union because that was unprotected action? Is that the real reason why you are so coy about those bans?

Mr Mier—If you can be specific about the bans, I will answer, but it has been to the Industrial Relations Commission.

Senator TIERNEY—The bans referred to no electoral work being done at Condor and Caroline Springs; there was no live testing of the towers and no rewiring or temporary suppliers and no live connections to the main boards at the towers.

Mr Mier—I think Senator Johnston asked the employer—

Senator TIERNEY—Is that a ban, or not?

CHAIR—Let him answer the question.

Mr Mier—I think Senator Johnston asked the employer and the employer said that there was work, as normal. Is that correct?

Senator TIERNEY—I do not think that the transcript is going to show that. I am just wondering why you are so coy about it. Is that because it was unprotected action and because you would then be liable legally?

Mr Mier—I do not believe—

Senator TIERNEY—A ban happens or it does not. Surely you would know.

CHAIR—Order! The time for these witnesses has expired.

Proceedings suspended from 12.50 p.m. to 1.47 p.m.

ALLPRESS, Mr Alan John, Manager, Western Ceilings

ALLPRESS, Mr John Gordon, (Private capacity)

JOHN, Mr Warwick, Christian Brethren Fellowship

STEVENS, Mr Gordon Malcolm, (Private capacity)

CHAIR—The committee prefers all evidence to be given in public. However, it will consider any request for all or part of your evidence to be given in camera. We note that your submission is confidential. The committee has before it submission No. 71. Are there any changes or additions you wish to make to the submission?

Mr John—Yes, there is one change to be made. On page 5 in item 3, the last line should be deleted and we would like to insert: 'Since this submission was made Chatham Plaster has received a small amount of work from this builder—very small jobs—and the work has been cut by 70 per cent.' That is the only change that we have made to the submission, Mr Chairman.

CHAIR—Mr John, if you are acting as spokesman on behalf of the group, I invite you to make an opening submission.

Mr John—I will outline what we have in mind. Firstly, the reason why we asked for it to be confidential was purely because a job in Western Australia was still in progress and the subcontractor was just concerned that there was no recrimination against him mentioning certain names. That is why we asked for it not to be—

CHAIR—Widely spread before?

Mr John—Exactly. After this hearing, it will be public, and we realise that.

CHAIR—You realise that? You are happy to make it public.

Mr John—Thank you. As the committee is aware, this submission has been prepared by and on behalf of members of the Christian Fellowship, known as Brethren. We take this opportunity to thank the committee and the secretary for including our submission in this public hearing today relating to the Building and Construction Industry Improvement Bill 2003. There are about 2,000 Brethren employers in Australia, quite a large number of which are actively engaged in many areas of the building and construction industry. These are all small family businesses and have fewer—mostly substantially fewer—than 20 employees. All these employers have a very good relationship with their employees because we believe this is a God-given responsibility placed on us as employers on the basis of the Holy Scriptures, which direct us to give to bondmen, or employees, as we would say currently, what is just and fair, knowing that you also have a Master in the heavens.

We believe that any third party outside of governments and their laws and regulations interferes with this God-given relationship and principle relating to employers and employees.

Because of this, we have often been involved on sites in conflict with trade unions. In many instances they refuse to recognise conscience, even though there is now provision in some states and the federal act for conscience. The committee will have noted that our submission outlines nine cases of conflict between Brethren employers and unions on building sites in recent times, but we want to make it clear that we are not here to take trade unions to task, Mr Chairman. Ours is not a political exercise. It is purely an exercise relating to a conscience before God in which we cannot participate in any schemes that would involve us in dealings with trade unions.

Governments for many years in this country, both state and federal, recognise that. But we would like to point out to the committee that there are real problems in the building and construction industry where unlawful action is still proceeding and currently on jobs in the building industry throughout the country. I can state categorically right now that in Sydney there is one job where one of our members is about to commence work. The job started in March. After it had been in progress 28 days, 12 of those days had been involved in full-blown stoppages over mostly minor complaints—some of them completely unjustified—relating to occupational health and safety and that type of thing.

However, we would like to point out that we believe that the principal objectives of the Workplace Relations Act include section 3B, for instance, the primary responsibility for determining matters affecting a relationship between employers and employees rests with the employers and employees at the workplace level and enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by the act. Neither of these objectives is achieved by most employers who are subcontractors in the building industry.

In Victoria, in particular, the Victorian Building Industry Agreement prevails—an agreement arrived at by the three building unions and the relevant employer associations. The vast majority of employees are employed by small subcontractors who are required by the head contractor to comply with the VBIA. For reasons of conscience, Brethren employees in the building industry do not belong to employer associations. Indeed, we do not belong to any other association at all, outside the Christian Fellowship. What we are trying to say is that we are not singling out unions, Mr Chairman. It is because of a conscience that we must adhere; nor are they able, with a good conscience, to be participating employees in superannuation schemes. There is specific provision in the national building construction industry award for Brethren employers to make contributions to superannuation schemes which do not involve membership and these are what are pursued by Brethren employers in the building industry.

This award also specifies requirements for redundancy, but there is no requirement to make contributions to a particular scheme. Many contract documents include requirements such as an EBA or commitments to the VBIA. Some of us have been in the industry for a long time, including Mr Allpress and his son and Mr Stevens. A few builders are prepared to give us work, in spite of the fact that we do not have an EBA and cannot meet the requirements of the VBIA. However, builders who are new to us—and that we have not met before and vice versa—are usually reluctant to take the risk of giving work to an employer who does not conform to EBA-VBIA requirements, even though they state that they respect that conscience, because of the possibility or probability of having stoppages on their jobs because they have employed a subcontractor that is not involved in these schemes, and even though they have made provision for their employees equally good, if not better, in some instances. We wish to emphasise that we

are in no way trying to avoid our legal obligations; we do not do that. That also would be part of our conscience before God. We do not avoid any of our legal obligations to our employees. In fact, there is scope within the law for us to make mutually acceptable agreements with our employees and at the same time we can maintain a conscience before God.

I would like to point out to the committee, and certainly certain members of the committee and many members of the government are aware of this, that for over 60 years the Brethren has made representations to Australian governments, federal and state. Both sides of the political division have made provision for conscience in industrial legislation. Because freedom of association is now enshrined in the act, union membership is not a serious issue. But the same principle of conscience applies to membership and participation in the union endorsed agreements and funds which, we believe, go well beyond the requirements of the law. We believe that the provisions of the Building and Construction Industry Improvement Bill 2003 will allow contractors more liberty to take advantage of the principal objectives of the Workplace Relations Act and in particular will allow head contractors to enter into contracts with Brethren as subcontractors without fear of reprisals which we have had from the trade unions. It is purely and simply because of the fact that we cannot, according to our conscience, belong to these associations.

Present here are Mr John Allpress from Western Ceilings, his son, Alan, and we have sitting behind us here, Mr Peter Way, from Chatham Plaster, both of whom have matters included in our submission.

Senator COOK—Good afternoon, gentlemen, and thank you for making yourselves available to speak to your submission. I am going to say straight-out that I believe it is appropriate to recognise in the Workplace Relations Act and other acts of the parliament that touch on this subject the right of conscientious objection. I think it is a right. There are, however, some tests to establish the right: that the conscientious objection is genuine and is deeply held, and there is a criticism of what they believe, but that it is a genuine and sincere belief and that people conduct their life according to those rights. Conscientious objection is not a provision, but ought to be extended to enable people to avoid obligations. If that is established, I think conscientious objection rights should be extended. Are you aware of the term in competition policy discussion of competitive neutrality?

Mr John—Could I ask Senator Cook to explain that a bit more, please?

Senator COOK—The concept of competitive neutrality in competition debate is a concept that basically applies to government owned trading enterprises that are in competition with private sector and trading enterprises in a particular sector. An example might be Australia Post in its Parcel Express division competing with private providers in the private sector. The principle of competitive neutrality is that there should not be any particular advantage derived to that division of Australia Post because it can cross-subsidise its activities from areas where it has a state owned monopoly in the postal services to undercut the commercial rates for the private sector companies. That may not be the perfect explanation but that is the explanation I can offer you on the principle of competitive neutrality. The issue here I do not think is so much of any contest over conscientious objection; it is a debate over how the principle of competitive neutrality might be applied. You say there are 2,000 firms of your Brethren employers and most

of them employ fewer than 20 employees. I understand that it is not a condition of obtaining employment with those firms that they must be members of the Brethren.

Mr John—Are you saying that all our employees must be members of the Brethren?

Senator COOK—No. I am asking the question.

Mr John—No, it is not so. No, we can employ anybody at all. For instance, the business that my sons own that I have retired from, it is not in the building industry any more, but we have got probably 12 employees, six of whom are not Brethren. That is so, right through. Some firms would have only Brethren, mostly just their own small family.

Senator COOK—In family firms, that is understandable. They may well be members of the Brethren and therefore claim a right of conscientious objection. In Brethren owned firms where the employees are not members of the Brethren, or some of them are family members who are and some are not members of the Brethren, then you recognise, do you not, the right of the non-Brethren employees to be a member of a union?

Mr John—That is correct. Mostly, and I would say probably wholly, because of the fact that particularly in the building industry at the moment the union membership is probably down to around about 25 per cent. It is not a problem to us, Senator Cook.

Senator COOK—No. It has been put to me—and I do not have a basis for evidence, but let me put it to you—that there are occasions on which Brethren owned firms ask workers applying for jobs that have been advertised as vacant whether or not they are members of unions and, if they are, decline to employ them.

Mr John—No, I would not say that that is accurate at all, Senator Cook, because that would be discrimination to start with. In a provision now in the federal Workplace Relations Act, the conscience that I know you are aware of, one of the stipulations for an employer to get a certificate from the federal commission is that if one member of the employees is in the union, in that case they will not get a certificate. And the federal commissioner has to look into that himself and get a statutory declaration on it.

Senator COOK—If there were complaints—and I am not giving standing to the argument that members of Brethren owned firms have declined to employ union members, but I am saying it is an argument that has been put—that discrimination occurs then the best sensible advice we could offer, apart from a legal remedy, would be for those persons, or on their behalf the union, to talk to the Brethren to sort that issue out.

Mr John—Can you give us an example of what you are referring to—any specific example, Senator Cook?

Senator COOK—The example that I was given was that a plastering company in the Blue Mountains or on the other side of the Blue Mountains declined to employ a couple of people after they had asked whether they were members of the union. They said, yes, they were and then they were told that they could not have the job. That was the example.

Mr John—That is not the way we proceed, Senator Cook. That might be hearsay and that might be somebody—we do not know what you are referring to, but it is not the way we proceed in our businesses.

Senator COOK—Mr John, I am not saying it is true. I am saying that this is what is told to me. For the sake of clarity, I am bound to put it to you so that we can sort this issue out. If that belief was held, that they were discriminated against by you because they were members of a union, of course that is in contravention of the law. The sensible advice might be for the union to talk to the Brethren to make sure that that discrimination did not exist.

Mr John—We would not accept that on the basis of what we have said, that we do not have dealings, which I know you are aware of, but it can be sorted out through the normal government channels with the commission, whether it be state or federal. It can be sorted out with an inspector, if it did happen. I have got a fairly good picture right through the country**,** and that is how we have been able to do this submission. I have never had that put to me at all. As a matter of fact, Brethren employers would be specifically careful not to do anything that would cause discrimination.

Senator COOK—If the complaints were referred to you, you would make it clear.

Mr John—We would most definitely look into it. Definitely.

Senator COOK—On the basis that it is unfair discrimination if that applied.

Mr John—I accept that.

Senator COOK—You would counsel and advise any member against whom the allegation is made that that is the appropriate response.

Mr John—Yes.

Senator COOK—Back to the concept of competitive neutrality: Brethren owned firms employing family members who, in a classic non-Brethren context would be a contract of service—that is, they would be employees of the company. The principle of competitive neutrality with respect to conscientious objection would apply in this manner. The company does not obtain an unfair advantage to other secular owned companies that are paying the appropriate award rates and observing the appropriate obligations for workers compensation insurance, superannuation payments and so forth, so that the conscientious belief was not a matter of distorting the market. That is how the concept works and providing a competitive advantage on religious grounds for private sector companies that did not hold those convictions. That is how the principle applies here. Do you accept that is a reasonable proposition?

Mr John—If I can just get what you are saying to us, Senator Cook, Brethren in no way, as employers, seek to avoid any obligation that is bound on us by law and, indeed, if you had come into contact with any Brethren employers personally you could establish that most of the employers are paying above the award and many times well above the award—well above what we are required to do. The Scripture I quoted before: 'Masters, give to bondmen what is just and fair knowing that you also have a Master in the heavens.' We are responsible to God for our

employees, the same as our family, Senator Cook, and therefore we will have to account to God for anything we do that is unfair or against the law. There may be an instance that could be brought up, I do not know.

Senator COOK—I am talking at the conceptual level at this stage.

Mr John—If you can understand, I am trying to answer your question. We must be bound by the laws of the land, whatever they are.

Senator COOK—Yes. So what you are saying is that there is no intention, because your conscientious objection is seriously held—and we recognise that it is a genuine conscientious objection—to employ family members in a worker-employer relationship with Brethren owned companies which undercut the rates and conditions so as to win a competitive advantage against secular owned companies that have to observe those rates and conditions.

Mr John—I can see what you are getting at, Senator Cook. We can see what you are getting at and I can say that it certainly does not apply. For instance, you are referring to employing our families. We could not underpay them because, as you would know—taking Sydney as an example—a house costs a minimum of $500,000 in the area where I live at Engadine, which is in the Sutherland shire, and how are they going to pay that off if we do not pay them properly? That is a simple answer. We pay all our employees, including our family, as I said, mostly well above the award. I have not heard in recent years of any complaints in that regard.

Senator COOK—Under some state laws—I am now talking about the federal law—Brethren owned companies in the building and construction industry would from time to time work under laws of state jurisdictions and not always under laws of federal jurisdiction. It is probably the case that the style of companies we are talking about work mostly under state jurisdictions. Where a conscientious objection is recognised in state jurisdictions, there is often a provision that union membership is an issue, the equivalent of the union contribution is donated to charity. Is that something with which you concur?

Mr John—That used to apply very early on, way back in the fifties, Senator Cook, but when our employees, as an employee, get a certificate of conscientious objection, they have to pay, the same as employers, the equal rate to either state or federal government to what they would be paying if it was a union subscription. That has applied for many years now. I think at first what you were saying was right. It was to be paid to a charity, but it now goes to the state or federal government, whatever it might be.

Senator COOK—I am more comfortable with it being paid to a charity than the state or federal government profiting from your conscientious objection, to be honest. I am paid to be opinionated, and that is my opinion. My last point is that Brethren members in an employee relationship with Brethren companies are entitled if they are not Brethren and therefore not subject to the conscientious objection rule, in this building industry, which is a follow-the-job industry, entitlements to superannuation, long service leave and job security payments made on their behalf. Just so that I am clear on your submission, are you saying that it is inappropriate for Brethren employees to have the equivalent of those contributions made to those funds?

Mr John—I will have to ask those who are involved in the building industry. Mr Allpress could answer that question better than I could, Senator Cook, because I am not involved in it these days.

Mr J. Allpress—I have to speak for the company that I established 30 years ago. Superannuation contributions were made on behalf of every employee. Long service leave entitlements we contribute to—we were all registered with the Long Service Leave Board, Coinvest, in this state. Redundancy is paid but we get a very, very low turnover of employees. We have a fund called the Western Ceilings Redundancy Fund which has sufficient money to make all the payments if all our seven employees were made redundant.

Senator COOK—The funds are paid.

Mr J. Allpress—Yes.

Senator COOK—Going back to the principle of competitive neutrality, since your conscientious objection is recognised and since it is recognised to meet the competitive neutrality test, is there any objection to unions, as they are entitled to under the law with respect to all companies, inspecting the time and wages records of your companies to be assured that those payments which are required are in fact made?

Mr John—We believe that there is provision for that in the state and federal schemes for the government to make those inspections. In fact I think Mr Allpress and possibly Mr Stevens in his business had to ensure that, at least according to the law or above it, they have called in, especially without any problems arising, the relevant government department to inspect their records to make sure that they comply. And that has been done.

Senator COOK—It is true that it is the right of the government, but my question is that unions also have rights to inspect time and wages records of companies. Do you recognise their right to do so?

Mr John—No, they do not have a right when you have a certificate of conscientious objection, Senator Cook, both federally and state. They do not have that right because they have no right of entry.

Senator COOK—They have no right of entry?

Mr John—They have no right of entry into our businesses because we have got the certificate and we comply with it.

Senator COOK—The certificate goes to workers.

Mr John—It goes to workers and employees.

Senator COOK—Yes, and as far as non-Brethren certificated workers are concerned, they have that right.

Mr John—No. According to the act, if you look into it—and I am sure that Senator Cook knows the act because he was once an industrial relations minister, as I remember.

Senator COOK—That is right.

Mr John—The current provision is that if there are no members of the union on the staff, the union does not have right of entry. We have to supply to the industrial commissioner a statutory declaration stating that we do not have members of the union in an employ. I think that would answer that question.

Senator COOK—I have to stop, but that has opened the door to a whole range of questions which I will take up with you.

Mr John—You can take it up with me by letter, if you like, Senator Cook. I would be only too glad to answer them.

Senator TIERNEY—Mr John, yesterday the committee visited a building site which is the 26-storey twin towers in Melbourne. The intriguing thing is that the principal contractor had 30-odd people on the site but the subcontractors in total had about 600 people on the site. You provide evidence that subcontractors are the main employers and that point was made very evident to us yesterday. They are able to negotiate appropriate agreements that suit the circumstances of their individual firms. Can you elaborate on that a little bit further in terms of why are they not able to negotiate such agreements, and to what effect on their businesses?

Mr John—Would it be appropriate if I asked Mr Allpress? They are in Victoria and they are involved in the very industry.

Mr J. Allpress—Senator Tierney, very frequently the contract documents that are signed by the head contractor contain clauses which require that the subcontractor has an enterprise bargaining agreement and that the employees of the subcontractor are contributors to a particular superannuation scheme or a particular redundancy fund. We have explained already—Mr John has explained it in a case—that for reasons of conscience, there is no way we can conform to those requirements. I think the Cole report made it abundantly clear that employment in the building industry is very largely by the subcontractors. The head contractors, as you have just mentioned, employ relatively few persons who actually work on the building site. The subcontractors are not really represented, bearing in mind that only 25 per cent of them on average are unionists anyway. They are not really represented, the employees or the employers, in the development of agreements such as the Victorian Building Industry Agreement.

Senator TIERNEY—So what effect does that have on your business? Are you left out of the game in terms of the principal agreement?

Mr J. Allpress—It limits the rights of the subcontractor to take advantage of the principal objectives of the Workplace Relations Act. It interferes with the rights that the employer with his employees at the workplace level.

Senator TIERNEY—How would you like to see things change so that it will work better for you or for other subcontractors?

Mr J. Allpress—Because of our conscience, we would like to retain the right that is enshrined in the act, in the principal objectives that we have referred to, and not to be discriminated against because we have not got an EBA.

Senator TIERNEY—The royal commission made some very disturbing findings about this industry. The royal commissioner found there is an urgent need to reform the culture of the industry. He found that the rule of law no longer had any significant application in the industry, particularly in Victoria. He found a significant misuse of rights of entry by union officials. He found that major projects in Victoria were regularly affected by industrial action. He found that a culture had developed in the industry where the union officials pursued goals without considering the rights of others or the legality of their actions. That is a very serious set of findings from a royal commission. Would anyone care to comment on that, in the light of your own experiences of the building and construction industry?

Mr A. Allpress—We are a little remote from the major construction sites as a result of our being such a small business ourselves and most of the Brethren employers having small businesses, but there is enough of that happening in the suburbs for us to reflect on the findings that became evident in that connection. We are certainly representative of the culture that is there. We have an inability, really; there are many closed doors as a result of our conscience. The agreements that are in place really preclude us from having the opportunity to tender on even some smaller projects because of the EBA provisions. The way the invitation to tender is presented to us is that there are certain requirements in the invitation. By submitting a quotation or a tender here, you are basically agreeing to the requirements, which we cannot do. So we are not really being given a chance to quote for the job. We have drawn it to the attention of the ACCC because, as you know, it is a trade practices issue. It is a very difficult one because it is only an invitation to tender. Legally there is no protection for us. If we were to quote for a job and win a contract and then have these provisions put on us then, then we would have some recourse to the Trade Practices Act because at that stage it would be illegal to try to impose it afterwards.

Senator TIERNEY—Does anyone else have any comments on my original question relating to the findings of the royal commission? Indeed, you added in your own submission the statement that the industry is lawless. You have actually stated that, so would anyone like to expand on that?

Mr John—I am sorry, I did not catch the last part.

Senator TIERNEY—In your submission you state that the industry is lawless, and I am wondering whether you want to expand on that.

Mr John—What we refer to in that is activity on building sites to coerce subcontractors to join the unions, for instance, or certain union schemes, which we are not prepared to do because of our conscience. Certain things have happened to some of our buildings. For instance, we have referred to one here which was a job at Richmond a couple of years ago. It was completely unprovoked and it just happened that a plumber had this job with Aldi at Richmond on a new building and came from Orange. The union official made it abundantly clear that he resented tradesmen coming from the other side of the mountains, similar to what Senator Cook referred to, I suppose, but in this case it was a plumber because, he said, they are paid lower rates of pay

there, which is not the case—as far as this man is concerned anyway. We got an industrial representative to speak to the builder and he spoke to the union official who had to change his ground on it and was pretty upset that he could not stop this man from continuing with his contract.

During the night—the only building on the site was his own personal building—the site was broken into and his shed was broken into and all his papers for that project were put in a heap in the middle of the floor and burnt. Nothing could be proved because there was no witness to it. Why did that happen to one person who was objecting to being forced by the union to get his employees to join the union when he did not want to join the union? The man on the job who was representing him did not belong to the Brethren and refused to join the union because he had had trouble with them before. That is the sort of thing that we are calling industrial lawlessness. That is just one example.

Senator TIERNEY—Thank you for that. I will summarise your initial comments where you said that legislators are sympathetic to your situation in terms of the laws we pass, but the picture you seem to be describing is that on the ground, that is not what is working out in practice. There is discrimination occurring in a whole range of ways. Would that be a reasonable summary of the position?

Mr John—Yes. You are starting off with what Alan has just stated. You are trying to win a contract and there is discrimination against us because of these things that we cannot join—associations and so forth—because of conscience. The builders in many instances are not prepared to take us on because they are scared of recriminations on the job. This is widespread. I have had experience in other industries going back to the 1950s where the same thing has happened.

Senator MURRAY—First, a statement: I and my party are strong supporters of religious tolerance and strong supporters of the principle of genuinely held conscientious objection, and we support the fact that that is reflected in the various laws of the Commonwealth, states and territories. What you indicate in your evidence is that there is a breach of two principles. One of the principles has just been enunciated and, secondly, there is a breach of the law which verifies those principles. I am wondering whether, though, there is not an easy way to resolve your particular problems. Have those of you who have been in building sites had sight of the EBAs which govern the sites in the projects that you are under? Have you read them?

Mr A. Allpress—I have read some.

Senator MURRAY—I have not but, as far as I am aware, no EBA includes a standard clause recognising conscientious objection—recognising the rights you have under law.

Mr A. Allpress—They do not.

Senator MURRAY—They do not, do they?

Mr A. Allpress—They do not. I do not have the act before me but my recollection is that the sections dealing with freedom of association or duress and coercion do not have itemised as an

area deserving of penalty breach of the conscientious objection provisions in the act. I do not know if you would confirm that, but that is my memory of the act.

Mr J. Allpress—I am sorry, I could not.

Senator MURRAY—Do you not think that one of the ways to end civil rights outlaw—the freedom of association you have established of a specific kind for yourselves—is for the parliament to consider amending the law to make it a breach of your conscientious objection rights and a specific penalty, and to require EBAs and awards and so on to specifically recognise the rights of conscientious objections established by law? In those cases it would be impossible for anyone to pretend that they are able to insist on rights of entry or any other provision.

Mr John—Just regarding conscience, Senator Murray, if a union was party to the EBA, then we would be in conflict with our conscience. Does that answer your question? Do I have your question correct?

Senator MURRAY—No. The union officials and organisers that oppress or harass your members who are employers or contractors do so on the basis that they wish to enforce the provisions of the EBA that apply to that project site. If I understand your case studies correctly, they are not recognising the exemption you have. That is correct, is it not?

Mr John—Yes, that is correct in most instances.

Senator MURRAY—So, if they are working off the EBA and the EBA told them that you have those exemptions even though you are not party to the EBA, and if the EBA itself simply stated that anyone on that site who held a certificate was not subject to those provisions, surely that solves the problem?

Mr J. Allpress—But the difficulty is that the EBA is an agreement between the builders and the unions. They would not agree to it.

Senator MURRAY—What I am suggesting is that the parliament would tell them that it has to be in there. You can make it a matter of law. If you go that route, you bypass all that other stuff and you just deal directly with your problem.

Mr John—Senator Murray, I think there is a lot of merit in your suggestion and that is something we could look into.

Senator MURRAY—Perhaps if you would look into it from your own perspective. I understand that you have had legal advice. I hope the committee will look at it. Yours is a sideshow, frankly. There are not that many of you and it does not matter that much in the scale of an industry worth tens of billions of dollars.

Mr John—No. In the long run, it does not.

Senator MURRAY—I would have thought that all you want to do is make sure that your rights are enforceable at law. Would you agree with that?

Mr John—That is certainly something that we could explore or look into, and we appreciate your suggestion.

Senator JOHNSTON—Mr John, you have given us five or six examples in your statement.

Mr A. Allpress—Nine examples.

Senator JOHNSTON—Yes, but there are five or six where the person is actually named. Example one is John Setka and Ian Markham from the CFMEU.

Senator COOK—I raise a point of order. This is a confidential submission. Quoting from it and putting in the public domain names that are sought to be covered by confidentiality may not be an appropriate thing to do.

Senator JOHNSTON—I understood that the document would be published after this hearing. The point is that there are a number of people named here in each of these examples who, in your submission, have been active on behalf of the union with respect to a Brethren company participating in a particular contract. Do you know what the knowledge of those union organisers is as to your status? In other words, Mr Setka, Mr Markham and Mr Dalziel know that you are an exempt organisation?

Mr John—Yes, they do.

Senator JOHNSTON—And Mr Reid—there are a whole lot of them.

Mr John—This was always pointed out, Senator Johnston, and the builder always knows what our situation is. We explain it to a builder in every instance and they know that we will not discuss the matters with the union, so the union official goes to speak to the builder. He knows right from the word go when he first comes on the site what the situation is.

Senator JOHNSTON—So your submission is that, notwithstanding that the union knows your religious convictions and the way you seek to practise your religious convictions, it seeks seek to circumvent your participation in the site?

Mr John—That is exactly right, and it has gone on for many, many years.

Senator JOHNSTON—Are you aware of the international covenants and treaties that deal with the practising of religious freedoms?

Mr John—Not being lawyers ourselves, we are not exactly aware, but you are probably referring to the ILO treaties and so forth.

Senator JOHNSTON—I would have thought that it is a strong tenet of the United Nations that you should be able to act in accordance with your religious beliefs.

Senator COOK—The International Covenant on Political and Human Rights.

Senator JOHNSTON—Yes. I am obliged to my colleague. Let us distil it down to what it really is. You are alleging that the union seeks to circumvent your practising those rights.

Mr John—That is exactly right.

CHAIR—Thank you, gentlemen, for appearing before the committee.

Committee adjourned at 2.38 p.m.