COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

EDUCATION AND EMPLOYMENT REFERENCES COMMITTEE

Corporate avoidance of the Fair Work Act 2009

(Public)

TUESDAY, 14 MARCH 2017

BALLARAT

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SENATE

EDUCATION AND EMPLOYMENT REFERENCES COMMITTEE

Tuesday, 14 March 2017

Members in attendance: Senators Marshall, McKenzie.

Terms of Reference for the Inquiry:

To inquire into and report on:

The incidence of, and trends in, corporate avoidance of the *Fair Work Act 2009* with particular reference to:

(a) the use of labour hire and/or contracting arrangements that affect workers' pay and conditions;

(b) voting cohorts to approve agreements with a broad scope that affect workers' pay and conditions;

(c) the use of agreement termination that affect workers' pay and conditions;

(d) the effectiveness of transfer of business provisions in protecting workers' pay and conditions;

(e) the avoidance of redundancy entitlements by labour hire companies;

(f) the effectiveness of any protections afforded to labour hire employees from unfair dismissal;

(g) the approval of enterprise agreements by workers not yet residing in Australia that affect workers' pay and conditions;

(h) the extent to which companies avoid their obligations under the *Fair Work Act 2009* by engaging workers on visas;

(i) whether the National Employment Standards and modern awards act as an effective 'floor' for wages and conditions and the extent to which companies enter into arrangements that avoid these obligations;

(j) legacy issues relating to Work Choices and Australian Workplace Agreements;

(k) the economic and fiscal impact of reducing wages and conditions across the economy; and

(l) any other related matters.

WITNESSES

BANNAM, Mr Clinton, Regional Organiser, Vehicle Division, Australian Manufacturing Workers Union

DAVIES, Mr Nigel, Organiser, Victoria, CFMEU

EDGINGTON, Mr Brett, Secretary, Ballarat Regional Trades and Labour Council Inc.

PILVEN, Mr Orry, Private capacity

TOWNSEND, Mr Allan, Industrial Relations Organiser, Australian Nursing & Midwifery Federation

Committee met at 08:47

CHAIR (Senator Marshall): I declare open this hearing of the Senate Education and Employment References Committee's inquiry into corporate avoidance of the Fair Work Act 2009, and I welcome you all here today. This is a public hearing, and a *Hansard* transcript of the proceedings is being made. The hearing is also being broadcast via the Australian Parliament House website.

Before the committee starts taking evidence, I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee generally prefers evidence to be given in public, but, under the Senate's resolutions, witnesses have a right to request to be heard in private session. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will then determine whether it will insist on an answer, having regard to the ground on which it is claimed. If the committee determines to insist upon an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

I now welcome representatives from the Ballarat Regional Trades and Labour Council. I understand that information on parliamentary privilege and the protection of witnesses and evidence has already been provided to you. Is there anything you would like to add about the capacity in which you appear today?

Mr Pilven: I am a solicitor at Saines Lucas Solicitors.

CHAIR: I now invite you to make a short opening statement. At the conclusion of your remarks I will invite members of the committee to put questions to you. Just before you do, there is media here who have requested the opportunity to not only report on the proceedings, which is absolutely fine, but also take some photos. Unless there is any objection to that, we will approve that as we normally do.

Mr Edgington: We wonder whether we can take the opportunity at the start of these proceedings to correct the record from our submission.

CHAIR: Sure.

Mr Edgington: We thank MaxiTRANS for their response to our submission to the inquiry and request the opportunity to correct the record. In regard to the submission by MaxiTRANS group human resources manager, Ian Else, to the inquiry in response to our submission, stating that MaxiTRANS have had no 457 visas for over 10 years, Mr Else, in all accounts, is technically correct. I apologise and wish to correct the record. I am not an expert in immigration and visa law, and you would need to be an expert to know the plethora of different and exotic visa types. I used 457 in our submission as a catch-all. I can only assume that MaxiTRANS stopped using 457 visas in 2006, because they made local and national headlines and were mentioned in state and federal parliament. Again in 2009 they made headlines nationally for laying off local workers but keeping its 457 workforce.

I refer to a submission from 2014 to the federal government's 457 integrity review. The submission was put in by Mr Ian Else of MaxiTRANS to the federal parliament. Mr Else states that in late 2012 MaxiTRANS moved to 119 visas, hiring 'in excess of ten'. Now, I have no idea what 'in excess of ten' means—pick a number greater than 10. These were welders and spray painters. Is it not possible to find these skills locally? I would be very surprised if that were the case. The submission also talks about how they have to pay their visa workers too much money and complains that they have to have English language skills. I apologise for not being an expert on visas, so I did some reading up, and 119 visas are for remote regional communities with low population growth. I wonder how MaxiTRANS in Ballarat got access to this program in Ballarat, one of the fastest growing inland cities in the country? I assume it was also under a Labor government under the time. The 119 visa program closed in July 2012, calling into question Mr Else's assertion that MaxiTRANS was using them in late 2012. I believe they are now called 857 visas. With a range of exotic visa numbers, the response from Mr Else at MaxiTRANS seems a little disingenuous.

We also thank VECCI for their response to our submission, confirming their pay guides do in fact differ from those of Fair Work, causing general confusion amongst employees, and recommend in future that VECCI refer employees to the official Fair Work guides, thus saving considerable time and saving employees considerable consternation. We also thank the Australian Election Company for their response to our submission, and Angela McCarthy from the Australian Manufacturing Workers' Union food division will respond later this morning in a separate submission.

CHAIR: Thank you for those corrections, Mr Edgington.

Mr Edgington: As for an opening statement, it is very often bandied around in Australia that we never ever want to be like America. But for a significant portion of a generation of regional young workers this is in fact the reality. A significant number of young regional workers have no access to the Fair Work system and to the award system. I refer to a newspaper article that appeared in this morning's *The Courier* from Commerce Ballarat, who are making a submission in this place later this afternoon, that we, as trades hall, are overcooking this. But I will refer back to the Fair Work Ombudsman's own figures.

The Fair Work Ombudsman recently released figures saying that from 2013 to 2016 79 per cent of Victorian hospitality employers failed to comply with the award wage system. The national average of noncompliance is 52 per cent. I am not saying Ballarat is any different than any other regional area. My observation would be that things are bad in Melbourne and as you move further out into the regions things get worse and worse.

One in two hospitality workers and a similar figure in retail, beauty and fast food is being illegally paid and is having their wages stolen. If someone were to rob a bank and steal a million dollars and sit down with Victoria Police, there would never, ever come a situation where the police would say to that employer, 'Okay, you've stolen a million dollars—you pay us back $200,000 and we'll call it quits.' Yet each and every day in the fair work system, that is what is happening to young workers. Young workers are having significant amounts of money stolen off them through wage theft, then they go into a system where they sit down and negotiate and where the employer offers to pay them back perhaps $2,000 of the $20,000 that has been taken off them, and mostly signing a confidentiality agreement so that then, effectively, they are not able to talk about what has happened to them. It is an appalling system.

Going back to MaxiTRANS, Senators and Committee Secretary, I wonder if I may call on Clinton Bannam from the AMWU Vehicle Division to speak briefly on that matter.

CHAIR: Sure.

Mr Bannam: Thanks, committee and Chair. I am the current organiser for MaxiTRANS, and the lowness of morale that I see in the place is vast. The management do not really seem to care for their workers, to the point where they have had three different HR representatives in 12 months. I am not too sure—I will have to take a page out of Brett's book here, as I am not across the vast majority of the different visas—but my understanding is that they might be 857s and that some of them are 187s, these workers. I was actually trying to chase up statements from current and previous employees, but they are all reluctant to give any statements due to any ramifications that may come from it. That includes previous employees; it is just the hold that the company has over this regional area, I should say. That is pretty much all I can say about that.

There is a couple of other things that I did want to mention. I may be going off topic here, but being the vehicle division organiser I look after repair, service and retail and in that I have found that some of the franchise company set-ups that have been put forward are actually run by head office. They have a separate ABN to run the franchise, and they do that purely for the avoidance of unfair dismissal laws—so they fall under the small business provision of the Fair Work Act because they employ fewer than 15 people, but everything is controlled by and refers back to head office. That is another issue I wanted to raise with the committee.

CHAIR: I think that is of some interest, if that is a common occurrence throughout industry. Are you able to provide further details on notice to the committee about those franchising arrangements? So that I am clear, are you saying that a company actually franchises out some of its functions in order that they become business units in their own right, but small enough to be then considered small businesses that, as such, are exempt from some of the protections that a larger business would have?

Mr Bannam: Yes.

CHAIR: Are you aware of whether those contracted out businesses do work for other companies as well, or are they solely employed by, in this case, MaxiTRANS?

Mr Bannam: No, it would be a separate company from MaxiTRANS, but I just wanted to raise that issue.

CHAIR: It is not MaxiTRANS that is doing it?

Mr Bannam: No.

CHAIR: So it is a more general issue? We had better be clear, given that I have mentioned MaxiTRANS, that you are not suggesting that this happens with them.

Mr Bannam: No.

CHAIR: All right, good. I am glad we have clarified that. Thank you.

Mr Edgington: Thank you. Returning to underpayment in the black economy at Ballarat, at Trades Halls we run what is called the Young Workers Legal Centre—a centre that is run on no resources and no funding. We rely on the goodwill of many legal services and lawyers in Ballarat to offer service pro bono or, often, free of charge, where we refer workers.

Young workers walk through the door of Trades Hall to report underpayments and issues that they have. At the moment we are seeing between five and 11 young workers every week at our Young Workers Centre and either referring many of them onto additional legal advice or assisting them in the process of making an application to Fair Work. I must stress this is something that is very important. We have compiled a list of businesses through presentations of young workers to our centre. The list is by no means exhaustive and I must point out that it is probably the tip of the iceberg. For every young person in Ballarat who finds their way to Trades Hall at 24 Camp Street to talk about an issue they have in the workplace, for every young worker who walks through our door and reports their circumstances, I would say from my own experience there would be dozens and dozens of young workers who do not. The stories we have received are harrowing and most of them are reporting cash-in-hand payment, but there are also, as our submission states, a significant number of under-award payments and various other breaches—non-payment of entitlements or the lack of applying the award in the proper way. It must also be pointed out that, as well as hospitality and retail, underpayment, cash-in-hand payments and sham contracting exist also across domestic construction, cleaning services in Ballarat, private residential care services, aged and disability care sector and many other sectors across our various industries in Ballarat. To speak a little bit about commercial and domestic construction, Nigel Davies from the CFMEU is here.

Mr Davies: Thank you senators and committee secretary for taking the time to hear us in regional Victoria. The reason I am here today is that I got an email only as recent as late on Friday that a company had gone into liquidation, and it was another case of phoenixing. I am going to probably name names and companies as well. This former company was Octane Australia. They built a service station in Wendouree, just on the outskirts of Ballarat. Fortunately, I caught up with these people back in June last year and notified a lot of Ballarat local companies not to work for this particular person, because he is well-known around Melbourne and around the construction industry. But Frank being Frank—Mr Nadinic, as we know him—he is very good with the talk and he convinced many local Ballarat people to work for him. I received the administration paperwork. There are Ballarat companies now who are over $500,000 and still counting that are owed money by Mr Nadinic, who has since gone into liquidation yet again. Of these smaller companies in Ballarat, there is one particular plumber, who is a great employer in the Ballarat region, especially for young local apprentices. He has been hit for about $135,000-plus and still counting. They are not big companies. They cannot sustain these types of hits in the country area—nobody can. It is happening all over Melbourne all the time as well. It is a known fact. How do we stop this? We did our darnedest to notify all the local builders in the area not to work for this particular person. Everybody has been a director of his company from all his children to his wives and even mother and father and stuff like that. I have no idea how to stop it, but we need something to happen here to govern this.

CHAIR: So you are saying that the person in question goes bankrupt once but then re-establishes a similar company using different directors—members of the family.

Mr Davies: Yes.

CHAIR: How many times are you aware on this particular instance that—

Mr Davies: It could be more, but I am aware of five companies.

CHAIR: They have all gone broke?

Mr Davies: Yes. The previous company was Maxstra and like all these people here with the cameras had *A Current Affair* chasing them around a couple of years ago. Google Maxstra and it will come up and everything is there.

Senator McKENZIE: Has he always operated in this region?

Mr Davies: No, never. That is why I was bit concerned for him coming up. He has always operated in the Melbourne CBD and suburb area.

CHAIR: Mr Edgington.

Mr Edgington: Returning once again to the visa situation, it might be a good opportunity for Mr Allan Townsend from the Australian Nursing Federation to speak on the impact within the health system.

Mr Townsend: Good morning, senators, and thank you for coming to Ballarat to hear from us. In relation to assisted visas, one of the fundamental tenets of the assisted visa program is that it is there to allow the filling of temporary skill shortages that cannot be met through the employment and training of Australian workers. A number of industries in the Grampians region recruit and employ people on assisted visas without investing anything into the education and or recruitment of Australian citizens and permanent residents.

The health industry provides a good example where nurses are employed on assisted visas whilst Australian nursing students who have recently graduated are unable to find employment in a health service in Victoria. Unfortunately, many of the people who are employed on assisted visas do not fully understand their rights in relation to receiving the same wages and entitlements of Australians employed in the same job, or are unable to raise their concerns due to their vulnerabilities.

We recommend that systems are put in to place to ensure investment is put in to training, especially in the areas where potential future skill shortages may occur and that genuine testing of the labour market is undertaken before assisted visas are accepted. Putting these things in to place will reduce the unwarranted use of assisted visas, protect Australian jobs for Australian citizens and residents, and level the playing field between employers who are doing the right thing and those that are not.

One of the big concerns is that a number of employers in the health industry, certainly in this region, use a default advertising internet arrangement. They use Seek, which is the predominant one. Seek get flooded with applications from overseas nurses seeking employment within Australia. I think there is a lack of education of people who work in that industry as to the true application of assisted visas. Therefore, because of the number of applicants they get, they will engage with those people and find that they end up employing them in positions in nursing which would otherwise be available to Australian nurses. Those people are missing out on the opportunity to be employed—and I am talking both public and private health. There are some good examples, even in Ballarat, which is a major regional centre, where we have nurses employed on assisted visas.

CHAIR: Does that have a number?

Mr Townsend: I am not sure—457 is certainly what I understood was an earlier arrangement. I am not sure of the current situation.

CHAIR: You are saying an assisted visa arrangement could be one of many different categories?

Mr Townsend: Absolutely. Some employers, and I am fairly sure because we have asked the questions, they have not been properly educated in relation to the requirement to invest locally in education and support for Australian nurses. A couple of years ago, we had 450 nurses that graduated that could not get a job in the health industry.

CHAIR: We will ask some questions to clarify. There is a market-testing requirement and you did say that employers are advertising on Seek in particular. Why doesn't that identify locals with the prerequisite skills to do that work and how, in fact, does that open it up to assisted visa people? Surely, they cannot be looking at Seek because they are not here yet.

Mr Townsend: I am not sure of how the links are there, but the employers actually say, when they have adverts via Seek, that they get a flood of international nurses seeking employment. We are talking three or four to one in relation to applications.

Senator McKENZIE: Are these international students who have permanent residency and who have graduated from Australian nursing colleges, or are they people from India, Britain or New Zealand seeking to become Australian nurses?

Mr Townsend: The latter. We are talking about people who are nurses in their own country seeking to be employed in Australia.

Senator McKENZIE: So the employer presumably, if out of all the hundreds of applications they choose to employ a nurse from overseas, has to go through a visa application process.

Mr Townsend: Yes.

Senator McKENZIE: Could you take it on notice to clarify it for this committee. I know you are saying it is not 457 visas, but I think it would be very important for us to have an understanding of how that happens, rather than just making claims that it does happen.

Mr Townsend: Yes.

Senator McKENZIE: Are those workers employed under Australian law and receiving Australian wages and conditions?

Mr Townsend: In the public sector, yes, because we are very much across the public sector. In the private sector it is much more difficult for us to gain a full understanding of exactly how those people are treated. But we have examples, again, where there are people coming here on visas that do not necessarily understand their entitlements either. For example, some of those visas allow for people to get assistance to go home every 12 months and that type of thing. When I have raised those sorts of things with employers, they have no knowledge or understanding of that, and neither have the people themselves.

Senator McKENZIE: Have you raised this with the Fair Work Ombudsman?

Mr Townsend: I am not sure about that. The Australian Nursing and Midwifery Federation may have, but I am not sure.

CHAIR: Given you said you have some examples, you might be able to provide some of those examples on notice to the committee. Without necessarily naming anyone at this stage, if there are significant employers in the private sector and also in the public sector that use a lot of these visas, maybe you could provide the names of those organisations to the secretariat before you leave today, and the committee, I think, might be minded to write to those organisations and ask how the process of recruitment of overseas workers takes place. It would give us something to work on.

Mr Townsend: Absolutely.

CHAIR: Thank you.

Mr Edgington: It is very interesting that we keep referring to it as a test on the international visa system. I return to the MaxiTRANS situation with 119 visas up until 2012—a visa for a remote regional area with low population growth being used by a manufacturing business in Ballarat, one of the largest and fastest growing regional centres in the country.

Senator McKENZIE: 2012.

CHAIR: Yes, so no-one is suggesting that this is a recent development. This has been going on for a long time. I have already made a note. We will certainly be writing to the immigration department to clarify some of those issues and get some responses.

Mr Edgington: Thank you. So there are the young workers who report to our young workers legal centre. One of the other things that I would like to raise in front of the committee today is feedback that we have received from our homeless intake services in Ballarat. They refer specifically to the growth in homelessness among women over 55 years of age in the region. The story of these women is almost universal. They have worked either in the black economy with cash-in-hand payment or in low-paid industries all their life. Many of them have no superannuation savings and, in the end, ultimately no hope. Underpayment, the cash-in-hand system and non-award payment are incredibly damaging to our local economy—not only to individuals but also to our regional economy and to the very business owners who in some cases are underpaying their workforce. They rely on people having additional money in their pocket to be able to go and buy that coffee or that extra piece of clothing or item from their shops.

The transition to the service economy in regional Victoria has stripped out safe and secure jobs and left tens of thousands of workers in precarious employment, vulnerable to exploitation. I would like to go through some specific stories that have come through our doors. One of the recent ones, not from retail or hospitality, is Dolls cleaning service. Dolls cleaning service is a significant cleaning contractor in Ballarat, with contracts to the City of Ballarat, and they also do a lot of commercial cleaning and some schools.

The workers I have spoken to, on the face of it, are paid the correct amount under the award system, minus a cent here or there because they are working on the VECCI pay tables. Dolls often hires cleaners that would clean multiple sites. If they are cleaning, they would clean a school, then move to an office and then move to another commercial office during the afternoon. What Dolls was doing to those cleaners, and I assume still is, was making them clock on at one site and then clock off. They would then travel in their own personal vehicle to the next site and clock on then clock off. Under the cleaning award, it very explicitly states that they are to be paid 78c per kilometre for travel in their own vehicle and that the time travelling between jobs is to be considered as ongoing employment time. For some of those workers—we are still adding up figures for the one who is seeing us at the moment—it will come to tens of thousands of dollars in underpayments.

The other significant issue is that a lot of those cleaners are working what they call split shifts. They are working in the morning and then having a couple of hours off then coming back in the afternoon. Under the award, there is a loading for the second subsequent shift within a day, and they are also not receiving that. There are lots of situations where on the face of it there is award compliance because the hourly rate is correct. But when we delve in we find that these workers are getting virtually none of the entitlements of the award they are working under. They are not getting their travel entitlements or loadings on additional shifts, and that is another very common story that comes in.

We have had workers from other places come through our doors. Once again, to be very clear about this list, these are businesses reported to us by young workers who have walked through our door. Many of these businesses have been reported by several young workers. I have been very careful with this list to make sure that if there is not significant evidence then I will not put them on it.

Just to roll off a local list, we had: Pippin Central Square; the Bean and Barrow, Creswick; Gloria Jean's Coffee; Racers by the lake; The Lake View Hotel; the Red Peppa; Ferguson Plarre bakery; the Royal Indians restaurant; and the Capri in the Bridge Mall. We have a significant issue obviously with Caltex and Liberty service stations, and you would know that, nationally.

I received a harrowing story the other day from a young worker in a Caltex service station. I should not mention the suburb because it will identify the worker, who is terrified, but it is here in Ballarat. There were a number of customers in the store and a car drove off without paying for fuel. The young worker became very distressed and actually burst into tears because he would have to pay for the drive-off from that service station he was working behind the counter on.

We also have Don Ciccios pizza, and lots of pizza places. Fish and chip shops are particularly bad. I have seen a significant number of young workers from the Rubicon Street fish and chip shop. Mainly, they are paid between eight and nine dollars per hour, and mainly they are young people under 19. I spoke to one girl who had been there for several years, who had started on $8, and because she had been there for a number of years she went to $9. As far as I know, there is no WorkCover insurance on those young workers. They are sacked on a whim, and the really distressing story the young girl told me was that she knew that what was happening to her was wrong and knew that the payment was wrong. She looked at me and said, 'Look, if I walked out tomorrow, there are a line of kids at the door who know what is going on, who will take the job'.

We have significant unemployment here in regional Victoria and significant pressure on our young children. And as I said, and I cannot state it enough, a significant portion of a generation of regional children and young adults entering the work force have no access to the Fair Work system or to the awards system. They are working in a black, cash-in-hand economy, with absolutely no workplace rights. Often, there is associated bullying and harassment, and they are sacked on a whim.

It is very difficult to follow-up on this legally because many times, when you find a worker in this situation, the boss will deny they have ever been there. In fact, if Fair Work were to follow up, it appears they never had. There is no paperwork and there is no mention of their name. Some of these businesses hold cash-in-hand books and some of them do not. It is very difficult.

One other story I particularly wanted to tell was with regard to Gill's Boatshed Restaurant and the Golf House Hotel restaurant. Stephen J and Jennifer A Bryant Family Trust own Gill's Boatshed and S&J Bryant Developments Pty Ltd own the Golf House. Of all the young workers who have come through my door to the Young Workers Legal Centre, I have seen more of their staff than any other's. I cannot say they are Ballarat's worst employer, but they are certainly in the running. The reason I wanted to tell this story is that I am really sick and tired of the Fair Work Ombudsman. Every time something like this happens they say: 'It's an oversight. This is an oversight of the business owner. They didn't know that they had to comply to the award system.' It seems to be a very common excuse. It is not an oversight. In many cases this is a deliberate, systematic, highly organised and externally advised process.

From the Boatshed Restaurant and the Golf House, I saw a young apprentice chef who was working cash in hand who cut her hand. She went to emergency and had her hand stitched up. The doctor said, 'You can't work, so I'll give you a medical certificate.' She returned to work with the medical certificate and was sacked on the spot.

We saw another young worker that worked for the Bryant Family Trust at Gill's Boatshed for just under 18 months. She had been placed on a salary arrangement which, under the award, was clearly illegal. The award for the hospitality industry says you can do a salary arrangement but it has to be better off overall and there is also additional loading on that salary. That was certainly not the case. It was calculated that this young girl, after 18 months, was owed nearly $26,000 in unpaid wages. She was employed for 40 hours a week and often worked 50

or 60 with no additional pay. She had been well and truly exploited. I want to tell the story of this young girl because it is important.

The Bryant Family Trust at Gill's Boatshed collects their till takings every night and saves them up until Thursday. On Thursday, the money goes into little envelopes, normally of $10 or $15 cash in hand, and the employees then come and pick them up. I can only assume that the till takings are then fabricated and the PAYG statements that go off to the ATO are also incorrect. There is a cash-in-hand book that meticulously records the cash in hand of that business, so it is not an oversight. This is a systematic, deliberate act to underpay the workforce both at Gill's Boatshed and at the Golf House restaurant.

I also want to tell this story because this important story is about what happens to these young workers. This young worker came and saw us at the Young Workers Legal Centre and was referred. It took months and months for this young worker to progress through the Fair Work system. There was telephone mediation, then waiting, waiting, waiting, and then more telephone mediation. An offer was made during that process well below the $26,000 that this young girl was owed, and she would also then sign a confidentiality letter to say that she could never talk about her underpayment or what happened to her. I know for a fact that this business has been through this process several times and relies on the fact that they can say at the end of the day: 'We'll give you $2,000 and you'll sign this confidentiality agreement so you can never talk about what happened here. We'll continue underpaying our staff and paying them cash in hand because we know that in the end we're better off overall. If a couple of people take us on it's only going to cost us a few thousand dollars and we've saved thousands.' It is very deliberate.

There has to come a point where there is strike policy. There must be a three-strike policy. If an employee is taken through the Fair Work system a number of times for the same offence, surely there comes a point where Fair Work must say, 'Hang on a second, we've seen a few people from this place and nothing has changed.' This is the problem with the compliance. The penalties are a slap on the wrist. They are normally not applied because they say, 'This was an oversight by the employer.' I would say that the penalty needs to be at least three times the wage theft involved so it becomes a significant offence. And there must be a point reached, when you have had a number of staff go through this process, where Work Fair then say, 'Are you a fit and proper person to be running your business?' To speak further on this matter and some other related matters, Orry Pilven from Saines Lucas Solicitors is here.

CHAIR: We have asked just a couple of questions throughout the process, but we have lots more—so, Mr Pilven, if you could make it snappy.

Mr Pilven: I will be very brief. I just wanted to discuss some of the issues I see clients facing, when they come to see me. I will speak generally, but I am happy to go into specifics. Most of the time, if clients are being paid cash in hand, there are no wage records. There are no records of the hours they have worked, so it is impossible. I have a case at the moment where I cannot work out what the client is owed. I know it is thousands, but I cannot work it out because there are no pay slips, which is an offence in itself, and there are no wage records. She has also recently put in a WorkCover claim, and now we cannot work out what her earnings were for the purposes of her WorkCover claim. That is a difficulty; Brett touched on it before.

The first question I get is, 'Won't my employer disparage me to others and I'll never work again in Ballarat?' That is the threat that is often made, particularly within an industry: 'Look, we know everyone in town, and you will never work again. I will put a black mark against your name.' The other problem, particularly with young or disadvantaged workers, is that they often do not have the resources to pursue matters. Obviously, well-resourced employers who are represented by their industry groups know this, and they use this to their advantage—and often there is no office. It is difficult to pursue matters. That is all I had to say on the topic at this stage.

CHAIR: Thank you. We can move on to questions. I want to talk about AWAs for a minute. You go into some detail about those in your submission. One of the things I was interested in was what you said about AWAs being transferred from one business to another or from one person to another. Can you just explain how that works?

Mr Edgington: It is very difficult to get evidence of this. I have it from employees who have come along, showing the collective agreements they work under that are very similar to collective agreements belonging to other businesses and were—strangely!—created after the Australian Workplace Agreement system stopped. What happens is that, if there are a number of partners in a hotel, one of the partners will then go and purchase another business and transport the AWA from the hotel to their new business. It appears to be happening. As I said, collecting evidence on this is very, very difficult because these AWAs are not registered with Fair Work, and it really relies on employees, most of whom are completely terrified, actually furnishing the workplace contract that

they are working under. I have to say that many of them do not have a workplace contract, in fact; they are working under these AWA conditions but have never formally signed a contract.

CHAIR: Yes, because my understanding is that an AWA was actually attached to an individual. You are suggesting that just the piece of paper is transferred, and people are told, 'These are your working conditions.'

Mr Edgington: It does seem that the AWA is not attached to an individual. There is the Golden City Hotel employees collective agreement. There is a very strange one called Hotels Ballarat collective agreement. You can look it up on the Fair Work Ombudsman site. It is still operating in Ballarat, but I do not know where it is operating. It seems to be a conglomerate of hotels in Ballarat that are operating under this agreement. There is nothing in the agreement as to physical location—where it is operating. It is called the Ballarat hotels agreement, and I think it was 2006 or 2007. It is still in operation, but we do not know where.

The big problem with the Australian workplace agreement system is that there is very little record of where they are operating and there is very little record of what happened to them, and, unless a party to the agreement seeks to terminate them, they continue indefinitely. The Golden City Hotel employee collective agreement is an amazing one. Christmas Day, public holidays, every day of the week and overtime are at a flat rate. It is an agreement that is well worth looking through because it is one of the worst that I have seen. The Ballarat hotels collective agreement—which, as I said, I have no idea where it operates—is very similar.

CHAIR: These agreements were established when you could just impose an agreement as a take-it-or-leave-it arrangement?

Mr Edgington: Yes. They are all 2006 and 2007 agreements. They all nominally expired in 2012. However, they will operate indefinitely until challenged by one of the parties.

CHAIR: This might have been why the termination-of-agreements clause is in fact there, to terminate agreements that cannot be identified as actually operating anywhere.

Mr Edgington: I think it is very clear that there needs to be some legislation to sunset Australian workplace agreements. The biggest problem is that a party to an agreement needs to terminate them. We know of a situation where an employee sought to terminate an Australian workplace agreement and was subsequently sacked and was determined by Fair Work to no longer be a party to the agreement, so they could not terminate it. This is a ludicrous situation. Apart from the fact that most of the people working in these places are (a) lowly paid, (b) terrified and (c) have no idea that they actually have the right to terminate their agreement. Even if they could they would probably not really want to undertake that process for fear of retribution.

CHAIR: When you say AWAs, you are actually describing a broader cohort of agreements which are collective agreements made under those same provisions where it did not actually require—theoretically it required the agreement of the parties, but were able to be made without that.

Mr Edgington: Collective agreements were made under Work Choices legislation we know that in Ballarat the Golden City Hotel, I believe, are still operating theirs; Hog's Breath; Gloria Jean's; we had a Bakers Delight. We are unsure whether it is still the case with Bakers Delight. I believe there was some talk that they may have sought to terminate that and go back to the award, but it is unclear. It is also very difficult to search for them. If you go to the Fair Work Ombudsman site and type in 'Ballarat' as a keyword, or any sort of keywords you just cannot find these agreements.-After exhaustive searching I will end up with an agreement coming in with an employee who comes into the legal centre with an agreement that I have never seen before. I have no idea how many are out there, but we really need to do something about them. Also, it is really unfair. If you are starting up a new hotel business in Ballarat and are competing against a hotel that is still operating under one of these awards, there is an incredible disadvantage.

CHAIR: I want to move to the advice that you have suggested that employers get. You gave a couple of examples, particularly bookkeeping and accounting type services. These are generally professionals who have formal qualifications and are often overseen by a professional organisation. It would appear that, while the employer has some rights and obligations under the Fair Work Act, external advisers seem to operate in an environment completely free from that sort of scrutiny. Do you think advice is actually organised on a broader level or is it simply that someone goes to the local accountant for their internal bookkeeper and says, 'Just do this. Keep the cash records.'? Should the Fair Work Act put some obligations on people providing advice on employment conditions to act within the law.

Mr Edgington: It is not something that I am aware of, that there is broader, external advice coming from accountancy firms or bookkeepers. I believe that bookkeepers and accountants also have a registration process and can actually face penalties through the compliance system. I know that there are a number of businesses in Ballarat that have bookkeepers that obviously turn a blind eye to this underpayment. Bookkeepers are coming in

on a fortnightly or monthly basis and doing the books. At the end of the day, that really cannot add up. If you are running two significant restaurants, one with gaming machines, and requiring 80 to 90 staff to man these, yet your payroll is not reflecting the number of staff, all I can say is that there must obviously be a number of bookkeepers who either turn a blind eye or a compliant to this practice. I would say certainly there needs to be much stiffer penalties. Obviously, it is not just under the Fair Work Act. It would also come in under the tax act and under the Companies Act. There is deception and fraud being perpetrated. You cannot put in your BAS and PAYG statement each quarter having paid cash in hand to a significant portion of your staff and have it correct. One thing that really frustrates me is that these organisations do not seem to work together. I would see that ASIC could work with the ATO, could work with the Fair Work system and could work with the state and territory WorkCover authorities to clearly identify non-compliance issues—if you matched that data.

Senator McKENZIE: How many young people would you see in any given month?

Mr Edgington: The figure that we have at the moment is between five and 11 workers a week. So extrapolating that out—probably, on average, 30 or 40 a month that we are seeing. That can be a phone call where they would seek some initial advice, and I might refer them to the Fair Work site to download a dispute form and to fill it out, through to referral on to legal service.

Senator McKENZIE: I just wanted to unpack that a little bit. When you say refer them to Fair Work—not the commission, obviously; the ombudsman.

Mr Edgington: Through the ombudsman—yes.

Senator McKENZIE: The front page seems to be all about young workers.

Mr Edgington: My printer in my office would be mainly printing unfair dismissal forms and general dispute resolution forms to be sent off.

Senator McKENZIE: So what role do each of the unions represented here today take onboard in terms of when a worker comes to you with an issue about their employer and clearly illegal behaviour is going on, and in reporting that to the appropriate authority? Does that happen in each and every instance, Mr Townsend, Mr Bannam, Mr Davies? I would be interested.

Mr Townsend: Certainly, from the ANMF, we have our own legal people. We refer people to the legal services to get advice. There are certainly cases where we refer people to the ombudsman to further their case. So we use a range of different methods.

Mr Bannam: Pretty much the same.

Mr Davies: Exactly the same. We have our own legal—

Senator McKENZIE: Do you go to your legal team—your Mr Pilvens of the union first or Natalie James first?

Mr Davies: I would go to our legal team first. We have in-house legal. That advice is appropriate.

Senator McKENZIE: Just around the bookkeepers issue, have you written to the CPA or accounting associations to make them aware of this potential breach of the law of their members?

Mr Edgington: No.

Senator McKENZIE: I think we are going to get the visa information on notice. So that will do for me.

CHAIR: Mr Edgington, you talked about young workers having no access to the award or the Fair Work system. Technically, everyone that is employed, no matter what the arrangements, do have access to both of those things. Can you just explain what you mean in practical terms by saying that they do not have access to it?

Mr Edgington: In practical terms, among young workers there are those workers who enter industries or businesses where there is a workplace agreement in place or the award system. For many workers working at a McDonald's, Kmart, Target or Myer, somewhere like that offers them protection. So those businesses have agreements in place and are compliant with the award system. For young workers, we see very few of those with issues through the office. There are then those workers that go into domestic building and hospitality, retail, aged care, where there is no information given to them when they are employed that they work under any sort of award system.

I must also point out, in reference to an earlier question, Senator McKenzie, that as young workers come to our door, if they are members of a union, we refer them directly to their union for legal advice. I see young workers who are not union members, and we assist them. Largely, our workers never knew there was a union for their workplace and have not joined. The very common thing that I get from young workers is: we did not know that there was this law in place, that there was this award system that we had to be paid under; we just thought that

getting $15 cash in hand in an envelope at the end of the week was how it worked. So I think there is a significant amount of education that we also need to roll out. Through the young workers centre, we head out to schools and we want to see young kids. We have a little brochure about 10 things you should know before you start work, and it just goes through minimum pay and junior rates of pay and those very basic essentials. As we go out to talk to those school groups, it really surprises me just how many people are unaware of that.

Senator McKENZIE: Mr Edgington, what is the going rate for McDonald's on a weekend if you are 15 or 16?

Mr Edgington: For a 15- or 16-year-old at McDonald's, I do not know exactly, but off the top of my head it would be between $11 and $14 an hour—somewhere around there—for that age.

Senator McKENZIE: I think it might be a little less than that, from my experience.

Mr Edgington: Probably less, yes, if they are at 50 per cent of the adult wage.

Senator McKENZIE: Are there any examples where the illegality of paying cash in hand actually means the young person is getting more than they may get at, in particular, fast food retailers who have done particular deals with particular unions that mean that they would be getting less than $10 an hour to work on weekends?

Mr Edgington: I would certainly suggest that there would be young workers receiving cash in hand that would be getting at or near what the proper rate would be. However, the problem with that is that they then have no recourse to employment rights—to unfair dismissal, termination or redundancy.

Senator McKENZIE: I am not saying it is right. I just want to get a sense of what the hourly rate would be for those young people.

CHAIR: If it were a legal requirement for an employer to provide to every employee a written statement of what they were entitled to, that would do two things. Firstly, you would be able to ascertain whether or not that written entitlement sheet were actually right or not, and that would be an easy exercise if it were in writing. Secondly, you would be able to ascertain whether or not employers complied with that. It might even be useful for employers to have to have that process so that they actually understand what their legal obligations are for employment—there is no excuse; you either choose to pay those legal rates or not. I am thinking out loud, but I would like your comment on it. It should not be too much of a burden for an employer to do that, because, in the first instance, they are supposed to know what they legally have to pay people in any case. It should not be difficult for them to put that in writing so the employee knows what they are going to do, if that were a requirement for every employer. Again, if you do not actually cross that first threshold of telling people what they are supposed to be paid legally, you are probably going to have some problems from here on in. Would you see that as a practical solution?

Mr Edgington: I would suggest that, as you very correctly raise, compliance would be the issue. At the moment, employers have to comply with the award system, but they are just clearly not.

CHAIR: No-one might know what that is. The employee might not have a clue what that is, unless someone has told them what that is.

Mr Edgington: I would suggest that employers are very aware of their requirements under the law to pay their staff. They choose to ignore it.

Mr Pilven: My understanding is that there is already something in place under the Fair Work Act in terms of the National Employment Standards—things like sick leave, annual leave and that sort of thing—that employers are required to provide when employment starts, but perhaps it could go further.

CHAIR: Do you know whether that includes your wages under the award that you work under?

Mr Pilven: I do not think it includes what your actual wage is.

Mr Townsend: I know in the health industry the majority of employers do actually provide that letter of employment that sets out those things about their wages and conditions and that points out which awards or which enterprise agreement they are under, which is fantastic because we rely on those things all the time. But unfortunately, in the private aged care sector in particular, there is a lot of employers that do not provide that. They do not provide their employees with it, especially those who have not got an actual enterprise agreement—where they are employing people under award conditions.

CHAIR: Some of my personal experiences since the penalty rates discussion has become front and centre is there are so many employees that in a sense are not disappointed that they are going to lose some penalty rates because they never received penalty rates ever before. Really, this debate has raised their awareness. The question is: was I entitled to penalty rates on weekends? I suspect from what you are saying and especially for cash-in-hand people, the experience of penalty rates is just something that people dream about.

Mr Edgington: That is correct. As I said, our figures would probably put that at one in two workers working in hospitality, retail, beauty in the region.

CHAIR: Are you saying half?

Mr Edgington: That is half of young workers, we would estimate.

Senator McKENZIE: What do you base that on?

Mr Edgington: The Fair Work Ombudsman puts the national average noncompliance rate at 52 per cent. So for each 100 inspections they carry out, 52 businesses are non-compliant.

Senator McKENZIE: Are those inspections a result of unions going and raising an issue? Is it like someone comes to you, Mr Edgington, and you then go to the Fair Work Ombudsman?

Mr Edgington: The very unfortunate situation is that the Fair Work Ombudsman will not talk to me or to trades hall. I cannot speak to them. If I were to ring up and say, 'I have a young worker who is in this situation,' they would say, 'Get the young worker to ring us.' They will not talk to us. They will not share. We can tell them where the cash-in-hand books are. We could tell them what is going on but there is no communication.

CHAIR: In the VCCI submission, they talked about having an ongoing and in-depth relationship with the Workplace Ombudsman.

Mr Edgington: Yes, this is correct. I have tried to call them.

Senator McKENZIE: Is that a cultural thing or is it legislated that they cannot talk to you?

Mr Edgington: My experience from calling them is that I have never been able to adequately communicate with them. They are doing 200 inspections in the Ballarat region at the moment of which they have conducted 50 and it is ongoing, I assume, because of media interest and pressure that this has happened recently in the region. But the other figure that I think is really important to point out is 79 per cent Victorian hospitality employers failed to comply between 2013 and 2016. So for every 100 inspections in regional Victoria of hospitality venues, 79 venues are non-compliant. We are not exaggerating these figures.

Senator McKENZIE: No, that is a figure I would have assumed. I wanted the 50 to be higher because, if these are businesses that people already reporting, there is something incredibly wrong if we are not finding that they are non-compliant. This is not a random sample of hospitality businesses in the region; these are businesses that have already been reported so you would think that, unless all the young people are telling fibs out there, there should be, when you investigate that particular business, a strong correlation between the young person saying, 'I am being paid cash in hand,' and that investigation saying, 'Yes, you are.' I think that is quite normal.

Mr Edgington: I point out that the current 200 places they are visiting in Ballarat are random.

Senator McKENZIE: That is random. It is not the typical one. Figures are really important.

Mr Edgington: They are, yes.

Senator McKENZIE: So I just need to make sure.

Mr Edgington: Of that 79 per cent, a number of those would have been just random 'walk up to the business' inspections. Fair Work does that. They will roll out to an area and conduct a number of random audits, so I would imagine they are encapsulated in that 79 per cent noncompliance.

CHAIR: Are you aware of how they are conducting their audit in Ballarat?

Mr Edgington: I am only aware second hand from some people sitting in restaurants when the inspectors have turned up in the afternoon to speak to business owners.

CHAIR: Does any of that happen on a weekend?

Mr Edgington: Not that I am aware of.

CHAIR: Or after hours?

Mr Edgington: Not that I am aware of.

Senator McKENZIE: Maybe the Fair Work Ombudsman does not pay penalty rates.

CHAIR: It is not really an issue of that, actually, but that is a good point. The issue really goes to the best time to find people not paying penalty rates. I suspect that a lot of young people are only employed in penalty type hours. Your evidence is that the employee technically does not actually ever exist, except that they get an envelope once a week with some cash in it. How do you ever find those people if you do not do random audits outside of normal working hours?

Mr Edgington: If you were to turn up to a cafe at three o'clock in the afternoon, they would show you a beautiful set of correctly audited books and the staff of course would tell you that everything was fine—mainly because they are terrified. I certainly know of venues where staff have been told, 'If you are asked whether we pay penalty rates, don't say anything.' So staff are certainly pressured not to speak about their employment conditions. For anybody turning up at the time of the day, everything would appear to be wonderful. If you were to turn up after six o'clock at night when there are patrons in there, it is probably a very different story.

CHAIR: Mr Edgington and the panel in front of us, thank you for your evidence to the committee today. The committee has a fair way to go in its inquiry. So I do invite you to keep the committee updated with anything you think would be relevant to our inquiry. If you need to correct the record or feel that there is something that we have missed or misunderstood, please feel free to supplement the committee with another submission. Again, thank you for your appearance before the committee today.

BROUGHTON, Mr Phillip, National Assistant General Secretary, Shearers and Rural Workers Union

CONSTABLE, Mr Bernard, National General Secretary, Shearers and Rural Workers Union

LISTER, Mr Alan John, Committee Member, Shearers and Rural Workers Union

PRYOR, Mr Mark, National President, Shearers and Rural Workers Union

[09:52]

CHAIR: I now welcome representatives of the Shearers and Rural Workers Union. Mr Constable, we are happy for you, or any members of the panel, to make some opening remarks and then we will ask some questions.

Mr Constable: Have you purveyed my submission?

CHAIR: Yes, we have.

Mr Constable: The Shearers and Rural Workers Union represents mostly people who work in rural areas who mostly work in jobs that are seasonal or itinerant and general poorly paid compared to the general mass out there. Our main thrust today is going to be avoidance of the Fair Work Act in the guise of moving workers from being workers to being independent contractors. We will talk specifically about the shearing industry, which covers shearers, roustabouts, wool pressers and all the other people associated in the shearing sheds who basically work under the federal pastoral industry award.

We have seen a growing incidence of unscrupulous employers and, you would have to say, dodgy WorkCover—I will call them WorkCover; they are workers compensation insurance companies, for which the term would vary from state to state, but it is happening all over Australia where shearing occurs, as we have been told anecdotally. They are basically removing workers from being covered by something the Fair Work Act might look after to something that is outside it, and the people who are losing out are the workers, not the employers. Employers are basically doing it to dodge paying superannuation, WorkCover or workers compensation money, to be exempt from occupational health and safety issues, and to dodge taxation.

We are worried about dodgy insurance companies because if they can take premiums paid by employers—for example, individual farmers—but then say to a shearing industry worker, 'You are not deemed to be a worker but you are an independent contractor,' then the insurance companies no longer have to actually pay for the injured worker. That has occurred. We have one member of the union that has given us quite a substantial amount of paperwork, and we have taken an insurance company called QBE to court over it, but this man is a member of the union. As most workers in the Australian landscape are not members of a union, most of those poor workers, through ignorance or inability—because most people who work in the shearing industry are not highly educated; there are very few that are tertiary educated—cannot battle their way through the court system, so they just throw their hands up and say, 'Oh, well, I'm going to have to cop that.' Then they get thrown onto the Department of Social Services to look after them through disability allowances or whatever. If they are missing out on super, they will eventually get to the stage where they will need an age pension and there will be no super for them, so then the taxpayer is picking up the bill there too. So this is the thing that worries us. Basically, I am just running through this.

CHAIR: Just while you are thinking about that, you are a relatively new union in the scheme of things.

Mr Constable: I would have said 23 years is not a new union.

CHAIR: In the scheme of things.

Mr Constable: In the scheme of things, yes.

CHAIR: I am just wondering. It might be worth it, just for my benefit and Senator McKenzie's benefit, if you just give us a little bit of background. It would appear you are a very niche union.

Mr Constable: You could call us a boutique union.

CHAIR: Boutique—all right. I just want to clearly understand where you have membership density. I do not mean this in a negative way.

Mr Constable: I appreciate that.

CHAIR: You are a very narrow sort of—

Senator McKENZIE: Specialised—highly specialised.

CHAIR: Yes, specialised.

Mr Constable: Absolutely. We would cover people involved in the sheep-shearing industry, as well as people involved in horticulture and agriculture. We have in the past represented goldmines, as in the Stawell goldmine in

western Victoria, and mushroom pickers, who would come under horticulture, I suppose. We have members who are fruit pickers. In fact, I am not a professional union organiser, so I have to actually earn a living occasionally, so I have spent the last four weeks up there picking pears. If you remember, that is a job that everyone, particularly the National Farmers' Federation, said that Australians will not do, which was complete and utter lies and bullshit.

Senator McKENZIE: Wow, Mr Constable! I would love you to come and talk to some of the communities I do. I wish more Australians would get out and pick pears.

Mr Constable: I know Australians who have gone up there in the last couple of years and cannot get a job.

Senator McKENZIE: Really?

Mr Constable: Yes.

Senator McKENZIE: We might chat offline about that.

Mr Constable: We might do that, too. Where we arose? In 1886 shearers started a union that ultimately became the Australian Workers' Union. The Australian Workers' Union was a union that, like other big unions, came under the spell of the 20 big unions that the ACTU and the Labor Party pushed back in the late 80s and early 90s. We were thrown on the scrap heap as an industry, because we were too hard to service. That is the reason that we came about. So I blame the Labor Party and the ACTU. But that is neither here nor there. That is basically what we do. I would like to concentrate on the issue of shearers being regarded not as workers but as contractors, and the consequences of that for the working people and the Australian taxpayer.

CHAIR: I really just genuinely want to zero in—we know you are a boutique union, so we know exactly where your specialities are and the fact that you are out there dealing with these areas.

Mr Constable: We are the only regionally based national office of a union. Our head office is in Ballarat.

Mr Pryor: I am also a working shearer, not to the extent I used to when I was younger and fitter. That is partly by choice and partly because I am selective about where I go, who I work for and who I work with. I have observed second-hand, in the sense that it did not happen to me—I do a shed that is 30-odd kilometres north-west of Ballarat, and I have done it for the past seven years and it has been the same three shearers to shear 3½ thousand sheep for six of those years. In 2015, the bloke who shears next to me primarily worked for a contractor—I will take advice later on naming him, if that is useful to you. The rest of his time he shore almost exclusively as an employee shearer for them. During the course of the shearing in 2015—I cannot remember exactly how the conversation got started—he informed me that he was no longer operating as an employee shearer and was now set up as a subcontractor. This had been done with the encouragement and assistance of, and possibly insistence of, his long-standing employee contractor. He had registered for an ABN and had contacted the Victorian WorkCover authority and established a potential cover for three or four non-existent employees. He told me that himself—that he was never actually going to employ anybody. It was simply to try to ensure that he had something to cover himself if he were injured. He did not shear there last year but I did and the farmer confirmed to me that he paid him as an independent contractor, whereas everybody else was paid as a PAYG employee. Over the years I think the tax office has ruled that there are four tests for you to qualify to be rated as a genuine contractor. The tax office has ruled on numerous occasions that shearing industry employees do not satisfy any—certainly not all—of those tests. There have been successful cases run against principal contractors. I think these have been under the WorkCover legislation. The principal contractor has then engaged a full shearing team as bogus subcontractors. There have been cases run and won, but it is definitely something that is increasingly appearing to happen.

I heard the discussion earlier—I have had this particular contractor under notice for a number of years because in 2011, back when they were actually employing people, they advertised for a shearer and a wool classer and explicitly stated that 'we pay $25 travel a day'. At the time, the federal pastoral award had a vehicle allowance of 74 cents a kilometre each way for travelling. Their ad also stated that they work within a 150 kilometre radius of their base. So that meant that anybody travelling greater than 34 kilometres in total—that is a return trip—would not be paid for the entirety of the rest of their travelling, as set out in the federal pastoral award.

CHAIR: So an independent contractor would be exempt from all award conditions such as travel and purely would have—

Mr Pryor: Yes. An independent contractor—there would be nothing. They have, obviously, in the past had a level of disregard for the award, but it appears that they are now attempting to shift their operations outside the award.

CHAIR: Generally, we are happy for people to name names if they want to. But if in this case, as you said, it is the second-hand information, it is probably best and safer not to. But if you want to, later, just give the name to the secretary; we will not put it on record. Again, the committee, as it makes some investigations, may make some inquiries about that.

Mr Pryor: I have no intention of naming the individuals here and all the farmers. I believe that they were victims of the scheme rather than instigators.

CHAIR: I just want to put a picture of the proper way in which names could be named. If you have firsthand evidence, I am more than happy for you to do it.

Mr Pryor: I am happy with that.

CHAIR: You said that these people were assisted to become independent contractors. Who assisted them?

Mr Pryor: The guy who told me that he had changed said that it was suggested to him by this contractor and that they advised him in the process. And it is possible that they may have insisted. I did not consider that at the time and I did not ask him. I do not know, so I am not saying—

CHAIR: Well, leaving that possibility to one side—

Mr Pryor: There is no question that they advised him in how to go about it, particularly in how to go about setting up a bodgie WorkCover. One of the biggest factors, if shearers were to become genuine independent contractors—if I as a 60-year-old, a shearer of 37 years and with just about every part of me worn out, went to try and arrange insurance for myself in the workplace, either I would not be able to get it at all or it would be so prohibitively expensive that it would not be worth taking out.

CHAIR: If we can just come back to the assistance because I am particularly interested in this aspect of it. Was the assistance simply, 'Go to this website; this is how you do it,' or did they actually do it for them? I have never applied for an ABN. I do not know what it actually involves but I imagine it is not as simple as—

Mr Pryor: I actually hold an ABN. It is not for shearing purposes; I do some bookkeeping work.

CHAIR: So it is you!

Mr Pryor: I was listening before. For instance, with this, presuming that my suspicion is correct, these guys previously employed an awful lot of people—presuming I am correct in suspecting that they have shifted a lot of those people off being PAYG employees, their accountant and bookkeeper surely would have to have noticed this massive change in the structure of their business. You could not imagine it had not been discussed how this change has come about.

Mr Constable: I do not know whether you are aware of the structure of the way people are employed in the shearing industry. There are two principal ways. Since, probably, the First World War there have been shearing contractors in the industry. That sharing contractor will go to a farmer, or a large station or whatever, and if they have, say, 30,000 sheep this year they will either give them a price of how much it is going to cost them by the cost plus a bit for the contractor or put in an actual quote per sheep. Then that contractor then goes out and recruits shearers and other shed staff to actually do that particular shed or run a shed.

Mr Pryor: With the first example that Bernie is talking about, which is called cost-plus contracting, generally the contractor would arrange and coordinate the team to be there. But they would actually be employed by the farmer, and then the contractor is paid a cost plus on top of that. And then you go to full contracting.

Mr Constable: Where they actually put the quote in.

Mr Pryor: It is $8 a head, and the contractor pays.

Mr Constable: Then you also have individual farmers.

Senator McKENZIE: Essentially, as a shearer—to put it in fruit-picking speak—you are on piece.

Mr Pryor: Yes. Shearers are totally paid piece-rate pay.

Mr Constable: Whereas you might be working with a roustabout that is on a run basis, in which a run is a two-hour section, with four full runs per day. You also have shearers who cockie shear. They shear for individual farmers. A farmer will ring up a shearer and offer him a job, and most of those shearers actually work under the specifics of the federal pastoral industry award. The farmer just pays them for the sheep shorn or the amount of runs they have worked if they are a roustabout. I thought I would outline that first so you know what we are talking about.

Mr Pryor: And withhold tax and be responsible for paying their super.

Mr Constable: Yes, and pay for their work cover as well. That leads us into Phillip Broughton, who might talk about the member we had who had the problems with an insurance company trying to toss him off.

Mr Broughton: With Bernie's resume, Chris Candy's name was brought up. He has been fighting a case for three years that has now gone to the High Court. QBE has stated—and I will leave the paperwork here for you to go through if you want the whole lot of it—that he is a contractor, but he has never had an ABN in his life. He has been shearing for 40 years. Without an ABN, he cannot be a contractor. I will read out the start of it. 'Your claim for weekly payments, medicals and likely expenses notice pursuant to section 75 of the Workplace Injury Rehabilitation and Compensation Act 2013'. That is the act that they have gone under. I will not read the whole lot and will just try to give an update. 'In accordance with advice you verbally provided to QBE, you confirmed the specifics provided by employers JB and GC Carlson'—that was the farmer he was working for at the time—'as correct.' 'For financial years 2012-2013 and 2013-2014 you would have earned approximately $3,000 annually from that farmer, which confirmed that, as stated by your claimed employee, you would have worked for the employer casually for approximately 14 days over an eight- to 10-week period annually.' 'While it is accepted that you have suffered an injury whilst working for Carlson, it is evident that you are a contractor. In order for the contractor to be deemed a worker under the act, a contractor must satisfy that, during the relevant period, 80 per cent of your services provided are completed by the same individual. Eighty per cent of the contractor's gross income must be diverted from the contract arrangement, and the services are not to be provision of the materials and equipment.' With that, No. 1, without an ABN, he cannot be a contractor. The farmers pay him the compensation. The actual farmer, Greg Carlson, is a good bloke, and he is fighting this as much as he can. But with QBE we have taken—

CHAIR: Is QBE WorkCover's insurer?

Mr Broughton: It is this farmer's insurance company. So they were just trying to wipe the slate.

CHAIR: So they have determined that, because someone is just a casual and does not primarily work for a single person, they cannot be a casual and must be a contractor.

Mr Broughton: Yes. I tried to get WorkSafe from Victoria. Unfortunately—because I run a farm as well and drive transports now because I had to retire from shearing because of a back injury—I did not get time to get the WorkCover from Victoria. I have got a letter from our lawyers in Sydney. The New South Wales act states, 'It is our view that a shearer that is engaged as set out above would be a worker not only for the purposes of section 4 of the Workplace Injury Management and Worker Compensation Act 1998 but also may be deemed 'worker' for the purposes of schedules 1 and 2 of the act.' I am not sure whether that is the same, because WorkCover is different in each state. That is New South Wales. That has come from a mate of mine who is an AWU organiser who is having the same problems in New South Wales with contractors stating that they will not employ a shearer unless he has got an ABN. A shearer that is a shearer alone does not require an ABN under any act in Australia, because he is deemed a worker, not an employer.

CHAIR: Yes. I think we would appreciate your leaving that material with us.

The guy involved in this is a Victorian?

Mr Broughton: Yes. This case has gone through in Victoria.

Mr Pryor: I have another small point in relation to this particular matter. As pointed out, Chris Candy had shorn for this farmer for a number of years previously. In each of those years he had been paid PAYG, had tax withheld and at the end of the financial year had received a PAYG payment summary from the farmer acknowledging him as an employee. So QBE have basically just—

CHAIR: Sure.

Mr Constable: And another point on that as well: QBE as an insurance company has been receiving premiums from this farmer for years and years knowing full well they were going to try to reject the workers the farmer was paying on behalf of, so you would call that a rip-off of the farmer too, I would have thought. I would say that is out-and-out thievery.

CHAIR: I just want to clarify that the guy was a Victorian and was working in Victoria when this happened, because both Senator McKenzie and I are Victorian senators. Outside of this inquiry I would be happy for you to make contact with my office in respect of this particular claim if you like, and we will try and follow the WorkCover side up in Victoria as a constituent matter anyway. I have got no idea why this has ended up now in the legal system.

Mr Broughton: It is going to the High Court now.

CHAIR: I'm not sure I can help with that! But certainly there are some broader questions that need to be asked anyway, which I know Senator McKenzie would do as well if you went to her office as a constituent matter. I extend that invitation to you.

Mr Constable: As your experience as senators goes, who would have a greater say on who is deemed a worker? Would it be some disreputable insurance company, or would it be the fair work office or the Australian Taxation Office? The Australian Taxation Office says, absolutely, shearers are pay-as-you-go.

CHAIR: We would love to be in the position where we could arbitrate on these matters, but, unfortunately, all we can do is make inquiries of the different organisations involved and try to get some explanations. That is all we can do. We do not have any other authority other than that, but, as I have said, I extend an invitation to you to contact my office if you want to.

Senator McKENZIE: Or mine.

Mr Constable: You might be more interested in the thievery part on the behalf of farmers.

Senator McKENZIE: I might just be. Thanks, Mr Constable.

Mr Broughton: One of the most important parts is that these contractors are stating that you must have an ABN, which is totally against the federal pastoral industry award to start off with. One contractor who I worked for before I had to retire shore in Ballarat and New South Wales. He had people who shore for him who said: 'I have an ABN. I'll do all me book work, and I'll just give you the staff at the end of the shed.' Two of the sheds that this contractor had were just out of Ballarat and Cullulleraine. In the best year, we shore 60,000 sheep in two sheds. One was a H-stand shed, and the other one was a tent-stand shed. There were eight shearers in the tent-stand shed and 10 shearers in the other one.

There were two blokes employed who had done all their own paperwork, even though they were working for a contractor, and put in all their own stuff. No-one would know whether they had their own work care or work cover in those days or what they were doing with their superannuation money. It probably never went to a superannuation fund. I would doubt very much if it did. But that is what a lot of these shonky contractors are doing now. There is a letter here, which I read out before. These solicitors—or lawyers, I should say—wrote a three-page letter to a NSW organiser deeming what the act says and what the act does not say about ABNs. That is one thing that it is going through a lot.

CHAIR: Mr Constable, we are nearly out of time. But, if Mr Lister has something quick to say, we will—

Mr Lister: Not really, thank you.

Mr Constable: I would like to give you a couple of recommendations, as far as we view things. With regard to all contractors, there were recommendations in the recent Victorian inquiry into the labour hire industry and insecure work. I think that this committee should look at, in particular, recommendations Nos 15, 16, 17, 18, 19, 20, 21, 23, 24 and 25 with regard to licensing of contractors who employ people. Hopefully, if this committee looks at those recommendations, they will tighten it up dramatically and improve the actual compliance of contractors.

This union would also like to see an increase in the Australian Taxation Office's resources to pursue breaches of ATO rules and nonpayment of tax and superannuation. We would like to see the ATO audit taxation accountants who promote avoidance of the Fair Work Act by, for example, encouraging individual workers to become contractors. We do know that there is one particular accountant in Ballarat who is encouraging people to become independent contractors. We would also like to see an increase of the resources of the fair work office to broaden its scope and increase its penalties, so allowing it to truly act as a guardian of the fair treatment and fair payment of workers.

Senator McKENZIE: Thanks, Mr Constable.

Mr Broughton: I have something to add just briefly on this. This whole system, the way that it is at the moment, is obviously not working. This case has been going for three years. I know of other cases in New South Wales. This inquiry will be going to New South Wales or will have been through New South Wales. I will leave that for another bloke who, if he has any brains, will probably discuss it with you on their side of it in New South Wales. It has taken three years for this particular case. There would be other cases out there that we do not know about, because they are not union members. But it has taken us three years to get this far in this case. He has been given one payout, but they did it on the minimum wage. They did not do it on his average wage from the last two years, which is what QBE stated that they wanted from 2013 to 2014 until the accident. He was making well over $1,000 a week before the accident. Then they came out and said, 'No, we're only going to pay you $850.' That is the reason why it is going further, why his insurance company, Neville, Lennon and Ross, has taken it further.

The point is that we have to try and speed this process up, eliminate a lot of stuff and make it fairer for everybody. Thank you.

CHAIR: Thank you all for your submission and your presentation to the inquiry today. You would have heard with the last panel that, if there is anything you think we have misunderstood or that you have not had a chance to tell us, we are happy to take extra submissions. Thank you.

Proceedings suspended from 10:26 to 10:40

KENNA, Mr Ross, Employee, McCain Foods

McCARTHY, Ms Angela, Union Official, Australian Manufacturing Workers Union

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses and evidence has already been provided to you. I invite you to make some opening remarks to the committee, and then we will follow that up with some questions.

Ms McCarthy: This was a fairly brief submission concerning some grave apprehensions we had during a contested enterprise agreement employee ballot at McCain Foods in October 2016. The concerns we have fall mainly into two categories. One is lack of transparency in the balloting process, and the other concern we have is mainly towards the lack of rights, as a bargaining rep, that we had during the balloting process.

With regard to transparency, the company flagged during the ballot that there would be 450 workers eligible to take part in the ballot. At our estimate, there would be an outside maximum of 400 employees eligible to take part in the ballot. This led to concerns in the workforce that people from the office, people not covered by the agreement and even people that had recently left the company might have been eligible to take part in this ballot. Despite several requests to the company to provide us with a list of names of those who could vote, none was given, so there was certainly a lack of transparency regarding that ballot that we would like to have addressed.

There were certainly issues with how the ballot was conducted. Workers were not able to logon to cast their vote. The ballot was conducted electronically by a company in Queensland, so we were unable to scrutineer. Workers who were unable to cast their vote had to get assistance from HR, putting them in a fairly awkward position if they were going to be voting against the interests of the company. So that was another problem. The lack of scrutineering certainly did not help to allay those concerns and was, again, another transparency issue.

Last but not least, as a bargaining rep we were not advised of the outcome of the ballot. Despite calling McCains and calling the Australian Election Company, who conducted the ballot, I was advised that I would not be given those results. The company was certainly aware of the outcome of the ballot first thing in the morning. I was never formally notified. I found out about the outcome of the ballot after close of business that same day. That essentially keeps bargaining reps in the dark and at a disadvantage with regard to the outcome of such a ballot.

They were the main concerns that I wanted to raise. I note that the Fair Work Act does not really provide a prescription about how these ballots are to take place. It gives no rights to bargaining greps with regard to how these ballots take place. I would like to submit that bargaining reps should be provided with a list of names of the employees eligible to vote in these circumstances, have a say in how the ballot process is conducted and be advised of the outcome of such a ballot at the same time as the company.

Mr Kenna: Thanks for the chance to speak today. I am basically here to put forward my personal experience with the vote, as Angela just spoke about. They held the vote electronically, so we had to log onto a website or call a free-call number. When I logged on to place my vote—I was off-shift at the time—it would not accept my employee number. I have been working at McCain since 2003 and have had the same employee number the entire time and for some reason it would not accept my number. When I rang the helpdesk number that came with the package the company had given us, I found out it was a public holiday in Queensland and therefore no-one was there to take the call. I ended up writing an email to the HR department to ask about what was going on and whether I could have some advice. HR provided me with an interim number which I used to vote.

Due to being the delegate, I had a whole bunch of phone calls from other members who had the same issue—they could not log on. They were not as confident to contact HR and get an interim number. Subsequently, we have been informed that the number they used was a SAP number. Only employees who have been employed over the last two or three years have been provided with a SAP number. Anyone who has been there longer than two years is under an older system. We were not made aware of this until during the voting process, so it was a pretty busy couple of days. As Angela said before, we were not informed at all of the outcome until close of business on the day after the vote. So, as you can imagine, we were pretty much peppered with phone calls about what happened and there was a fair bit of suspicion amongst the workforce as to whether the voting was fair or whether it had been tampered with.

CHAIR: Maybe we will go back so I understand how the vote came about. This was not a Fair Work Commission directed ballot?

Ms McCarthy: No.

CHAIR: This was, as I understand it, the employer deciding to put an agreement to its workforce that had not been agreed to.

Ms McCarthy: That is correct.

CHAIR: The act provides that the employer can do that at any time and there are no rules around how that ballot is to be done. Is that right?

Ms McCarthy: That is right.

CHAIR: Can they conduct it themselves?

Ms McCarthy: I think that there are some checks and balances that need to be done. Our main concern was lack of rights for the bargaining representatives, such as myself, because we had no say in how it was to be conducted. If you are asking whether the company could have conducted it themselves, the answer is that I do not know.

CHAIR: Did the company consult you about who they were going to engage to conduct the ballot?

Ms McCarthy: They did, yes.

CHAIR: And that consultation involved just letting you know?

Ms McCarthy: That is right—telling us. We were told rather than consulted.

CHAIR: It sounds a little bit extraordinary. Have you had an opportunity to read the Australian Election Company's response to your submission?

Ms McCarthy: I have—yes—and I did note that they did agree that we certainly should have received the results at the same time as the company. Quite honestly, in these situations, it gives the company an unfair advantage. They were held up in meetings all day when they were made aware of the ballot, giving them time to plan a response, and we were in the dark about what the results of the ballot were. It kept us at a distinct disadvantage. Richard Kidd from the Australian Election Company certainly agreed that we should have had the results at the same time.

CHAIR: I notice the Australian Election Company's submission very clearly refers to 'the client' and in their view, in reading their submission, the client was the company and only the company and that is who they were working for. They do make some suggestions about how they would improve the system if they could. Are you now on top of the issue with respect to what you thought was a discrepancy in the number of people eligible to vote?

Ms McCarthy: We never did find out. We had a good result in the ballot. We ran a 'vote no' campaign and it got up resoundingly, so the outcome for us was good, but it could have gone the other way. Had we lost by a narrow margin, there would have been unanswered questions about whether people voted when they were not entitled to vote and were not covered by the agreement. Quite frankly, that sort of lack of transparency I do not understand. The voting process should be fair and above board and it should be seen to be that way. If we do not know whether people are voting in that process and should not be, that again puts us at a disadvantage and it casts the whole transparency issue into question.

Senator McKENZIE: Ms McCarthy, what changes would you like to see in order to give the level of transparency you are looking for?

Ms McCarthy: On several occasions we asked the company for a roll or the names of all the people—

Senator McKENZIE: No, to the act.

Ms McCarthy: To the act?

Senator McKENZIE: Yes. Obviously they are within the law; they have conducted this ballot within the law.

Ms McCarthy: Yes.

Senator McKENZIE: So we then have a problem with how that is being applied.

Ms McCarthy: The act should give some rights to bargaining representatives to have a say in how the ballot is conducted, to make sure it is suitable for the employees in the workplace. It should give us the right to scrutineer such a ballot—I would have thought that would go without saying, to ensure transparency. I see no reason why the act should not also dictate that we should not be advised of the outcome of such a ballot at the same time as the company. We are a stakeholder in the process, so keeping us in the dark—I do not see any reason why that should be the case.

Senator McKENZIE: Do you think, Ms McCarthy, that the representatives of the workers should know the result before the workers themselves?

Ms McCarthy: I would be happy if all stakeholders knew the result at the same time.

CHAIR: Mr Kenna, you are one of the bargaining representatives?

Mr Kenna: Yes; I am a delegate.

CHAIR: Have you since asked the company for a list of names? Because 400 to 450 actually is a significant number. I know if that was happening in a federal sphere, 50 votes across 100,000-odd in a federal electorate would be cause for enormous concern and probably front-page headlines. But 50 out of 400 is a massive proportion of votes that you cannot seem to identify where they are from.

Ms McCarthy: That is correct. In the interests of being transparent myself, the company advised us there were 450 people eligible to vote, but according to the Australian Election Company, there were only 431. Nevertheless, our estimate at the outside was 400. We do not know where those extra people came from even now.

CHAIR: The company was bringing people from New Zealand to work during times of industrial action. Do you believe they may have been given a vote?

Ms McCarthy: We do not know, and there again is the point: we do not know who these extra people might have been compromised of.

CHAIR: Does the company have casual employees?

Ms McCarthy: It does.

CHAIR: This is probably asking you for an opinion. I suppose there are regular casuals and irregular casuals, but when they work they will be working under the agreement. If a casual had not worked there for a couple of years, would they potentially be getting a vote? Mr Kenna, earlier you talked about this pin number that every employee has had for the last couple of years. Did anyone who worked there, no matter how long ago and how irregularly, also get a vote?

Mr Kenna: We are still unsure. Our figures are basically done off the member roll that we have as well as our best guess. Having been there a long time—I have been there almost 15 years—I have gotten to know most of the casual employees and know who is and who is not in the union. Our best guess at the time was around 400 who would be covered by the EBA. As Angela said, at the time we were given a number of 450 and we could not make that work anyway we looked at it.

Senator McKENZIE: But the people conducting the election, who are charged under law to make sure it is conducted lawfully, said it was 431—is that right?

Ms McCarthy: They said 431 were eligible to vote; nevertheless, our outside estimate was 400. To this day, we still do not know where those extra people came from. Quite honestly, we would have put an estimate at more like 390, but to give a bit of leeway we said 400. There are people in there—

Senator McKENZIE: And that was based on union membership plus Mr Kenna's 15 years of looking at who comes and goes from the factory?

Ms McCarthy: Yes, that was the best 'guesstimation' we had.

Mr Kenna: We have members in there who are responsible for actually assigning work to the casuals. We spoke with them as well to get a rough idea—the shop stewards had a rough idea of who is and who is not there. Recently, just before all this came about, the company downsized one area of the factory and offered a whole heap of voluntary redundancies to employees, and they were taken up. Some of the names of those people who took the redundancies were still on an email list and received some documentation that was sent to all of us. At the time, we were a little bit worried that some of those people, those who had taken redundancies and no longer worked at the company, may have been given the information that we were given as well.

Senator McKENZIE: Deceased people are still on the electoral roll up to a certain date to the election. Is your contention, Ms McCarthy, that the Australian Election Company acted illegally and gave ballots to people who were not legally entitled to vote?

Ms McCarthy: I have no idea. The issue for us is transparency. There were questions that the workers on the shop floor had that we were not able to answer, and we should have been able to answer them. Transparency in this process is crucial. The workers need to have some confidence that it is a properly conducted ballot.

CHAIR: So the Australian Election Company would simply have been acting on the advice provided by the client.

Ms McCarthy: Yes.

CHAIR: I think you are suggesting that at the very first level there should be transparency there about the formation of the roll, and then the process of the actual voting and then the scrutiny.

Ms McCarthy: Yes. The scrutiny and the dissemination of the results to everyone at the same time.

CHAIR: But if people are there at the scrutineer stage, that is in fact that outcome too.

Ms McCarthy: Yes.

CHAIR: The Australian Election Company actually concedes some of those issues. That is the way they would like to conduct a ballot, but they are not required to. They are a business, and the client says: 'Here you are; here's the list of names. It's not a matter for you to determine the eligibility. We've just simply provided you with a list of names.' Is there a criticism of the Australian Election Company or just of the process that was simply used?

Ms McCarthy: We did ask the company for the list of names to ensure that transparency. We did not ask the Australian Election Company for those names. Quite frankly, McCain should have been obliged to provide them.

CHAIR: Is the dispute now resolved?

Ms McCarthy: It is now resolved, yes.

CHAIR: Has that been resolved by a further ballot?

Ms McCarthy: It has been resolved by an agreement put to the workers, and it was endorsed unanimously.

CHAIR: How many people voted in the endorsement ballot?

Ms McCarthy: You are testing my memory. It was a vote at a meeting with a show of hands, and I do not have those figures before me. Do you remember, Ross?

Mr Kenna: From memory, there were around 200 to 250 people there.

CHAIR: So we are not in a position to now make a comparison about the workforce to the amount of people who voted?

Ms McCarthy: No, because it was an agreed position that was put to the workers, who are well informed of the vote. They attended a meeting and we did a show of hands. The issue we are speaking about, that was a contested agreement.

CHAIR: Sure. In retrospect, there is probably ability now to determine how many people are employed and covered by the agreement. In fact, doesn't the company, in registering the agreement with the Fair Work Commission, actually have to provide a stat dec identifying the number of employees it covers? It has been a while since I looked at that part of the law.

Ms McCarthy: I think that they do.

CHAIR: That might be an interesting place for us to start, to have a look at that.

Ms McCarthy: I would point out though that the numbers have fluctuated since that point in time to us getting an agreed position. For example, at that point in time, when the ballot was being contested, there were approximately 61 casuals. We have just been advised by the company there are now 171 casuals. So between then and now the numbers have changed.

CHAIR: And the casual number fluctuates because of the seasonal nature of the production work?

Ms McCarthy: Yes, the seasonal nature, but there was also a change in the agreement about how work was to be rostered to casuals so that has something to do with it as well.

CHAIR: As there are no further questions, thank you for coming in. It is a very narrow issue that is a very interesting issue. It is one that certainly deserves the attention of the committee. Thank you for your submission and for appearing before the committee today.

Ms McCarthy: Thank you very much.

Mr Kenna: Thanks for your time.

KING, Mr Damian, Electrical Trades Union Victorian Branch Organiser, Locked Out Parmalat Echuca Employees/Union Members

KYNE, Mr Brett, Australian Manufacturing Workers' Union Delegate, Parmalat Echuca

LUCIC, Mr Mato Francis, Australian Manufacturing Workers' Union Shop Steward, Parmalat Echuca

PANKHURST, Mr Adam, Electrical Trades Union Shop Steward, Locked Out Parmalat Echuca Employees/Union Members

[11:06]

CHAIR: I now welcome a panel of employees and a representative from the Electrical Trades Union to the table. I understand that information on parliamentary privilege and evidence given to committees has already been presented to you. I now invite you to make some opening remarks to the committee to be followed by some questions.

Mr King: I will open up and then hand over to the actual employees that are representatives of the workforce. I am an official with the Electrical Trades Union. There are two unions involved in this process, the AMWU and the ETU, and we are both involved in the bargaining as a joint operation, for want of a better description, of the two unions. I do not propose or plan to make a lengthy statement in terms of introduction. The committee has the submission that we forwarded. There are a couple of points that probably should be put on the record for starters. The indefinite lockout of the 70-odd union members at Parmalat Echuca is still in place—that is 55 days after the indefinite notice was put into effect. That is nearly eight weeks. Since that lockout commenced, the employees, the union members, have had a 24-hour-a-day, seven-day-a-week protest camp at the front of the Echuca site, and about two weeks ago the union members decided it was appropriate to make a submission to this committee. So that is basically why we are here today.

Parmalat continues to pursue before the Fair Work Commission an application to terminate the existing enterprise agreement that covers both production and maintenance employees. As detailed in the submission, that application was first lodged in early October 2016. In late February 2017, Parmalat tabled their final submission with the Fair Work Commission where it indicated it is still seeking the termination of the existing enterprise agreement. As detailed in the submission, if that application were successful it would take the employees back to the award rates of pay and award conditions. The commission has set down 18 and 19 April 2017 for two days of hearing to consider the termination of agreement application. That hearing is due to take place in Shepparton. After the three employee representatives make their introductory statements, I would be happy to answer any questions on the submission. Thank you.

Mr Pankhurst: Good morning. I am 28 years old and employed as an electrician at Parmalat Echuca. I am an ETU shop steward and, most importantly, I am married with two young children, Theodore, who is four years old and Milla, who is 18 months old. I will give you a brief background of my work history. I left school when I was 16 years-old to pursue a career as an electrician and entered an electrical apprenticeship in April 2005 with, at the time, Nestle Echuca dairy dessert factory. During my apprenticeship, in approximately mid-2008, Nestle was bought by Fonterra and I completed my apprenticeship with them and gained my full qualifications as an A grade in 2009. I was then offered as 12-month position which evolved into an offer of permanent employment which now continues with Parmalat. In total, I have dedicated 12 years to the factory, with two years as an ETU shop steward representing the electricians.

I am a C6 electrician and site high voltage operator. My duties include and are not limited to: preventative maintenance, responding to breakdowns, project work and automation. I am also responsible for the maintenance of the site high voltage apparatus. I currently work in eight-hour rotating shifts, which includes day, afternoon and night shifts, with every fourth week being required to be on call. Since Parmalat took ownership 13 months ago, at the company's request the electrical team have worked three different eight-hour rosters to meet their requirements. The site's electrical workload has also increased, with one electrician being made redundant during that period.

When Parmalat took over the business in February 2016 from Fonterra, under transmission of business provisions, Parmalat was bound by the Fonterra Echuca agreement 2015, which had a nominal expiry date of 31 August 2016. Both of the unions—ETU and AMWU—and Parmalat agreed to start the negotiations for the next agreement early, and the first meeting was held on 12 July 2016. In an effort to be productive the unions sent the company our endorsed log of claims via email on 7 July so we could make the most of our initial meetings. We were told by the company that we would have the company's log of claims at that initial meeting. It was not until 20 July that we received Parmalat's aggressive log which included attacking workers' superannuation, the

casualisation of permanent jobs, removing their obligations to consultation, our rights to public holidays and our right to employee representation. It even went to the point of deleting clause 9 in our agreement, which reads, 'Employees covered by this agreement will not be made redundant as a result of contracting out existing work.'

This sent a clear message to employees of the company's intentions to casualise the workforce and reduce the job security for the permanents.

On 4 August 2016, at only our third EA negotiation meeting and before our current agreement had reached its nominal expiry date, Parmalat decided to bypass the negotiations and put their proposed agreement out for a vote to the employees. My opinion is that this was not an act of genuine bargaining to reach an agreement. The vote was conducted by the Australian Electoral Commission on 18 August. Parmalat's proposed agreement was voted 59 against and five in favour, with employees recognising the disadvantages and cuts to wages and conditions that they would incur.

After the vote Parmalat returned to negotiations with the unions for a brief period. On 3 October, nearly five weeks past the nominal expiry date of our agreement, Parmalat took the drastic and unprecedented step of applying to the Fair Work Commission to terminate our agreement. This sent shockwaves through the workforce, as no-one knew the company had the right to terminate a long-standing agreement and our wages and conditions with it. This would have a monumental impact on all 70 employees at the Echuca site, with wages cut by up to 50 per cent, redundancy payments capped at 16 weeks, increased work hours and cuts to working conditions.

Parmalat have applied to terminate the agreement as a bargaining tool and to improve their bargaining position by using the looing termination date as pressure for the employees to agree to their terms. In Luisa Marinkovic's statement to the Fair Work Commission—she is Parmalat's national HR manager—she states, 'I believe that a successful conclusion to the enterprise bargaining negotiations is more likely if the Echuca agreement were terminated.' This is not reaching a mutual agreement. This is not genuine bargaining. This is not bargaining in good faith. This is manipulating the Fair Work Act to suit the employer.

Since the day the company applied to have the Echuca agreement terminated, every single employee has felt the pressure of the proposition that their once-secure future now faces financial difficulties and job insecurity. In response, employees endorsed taking protected industrial action. After filing in the correct process we initiated a four-hour work stoppage—one for each of the three shifts—that commenced at 3am on 18 January. The employees were locked out indefinitely by Parmalat immediately after the first stoppage occurred. We have been locked out on no pay ever since. That is just under eight weeks now.

This has put a huge strain on myself and my family financially and emotionally. I have been to the bank to put my home loan on hold, my wife is working extra shifts and I have sold some of my personal belongings to ensure I have food on the table for my kids. To this date, it has cost me over $13,000 in lost wages. I know the other 70 employees are feeling the pinch as well.

We have continued negotiation meetings with the company since being locked out. The company have tried introducing new claims, such as a two-tier pay structure where new employees would earn up to $11 an hour less than the current employees. The company decided to put their proposed agreement out to vote again. This was almost a two-week process that I feel wasted valuable time where we could have had meetings for further negotiations.

As part of the company's latest proposal, on 22 February they included that the application to terminate the current the Echuca EBA would be withdrawn if this proposed agreement were accepted by a valid majority of employees. This is using the pending hearing of the application to terminate our agreement as leverage and a bargaining chip to persuade the employees to endorse their latest plans for reductions in site employment conditions. I and 67 other employees knew that this proposed agreement still did not satisfy our needs to retain current wages, conditions and job security. In a secret ballot conducted by the Fair Work Commission, 98½ per cent of employees voted against the company's offer, with 68 no votes and one yes.

I believe that neither Parmalat nor any company should have the ability to terminate agreements, taking away workers' wages, entitlements, redundancy payments and conditions while they are still in place and still being negotiated. If Parmalat are successful in their application to terminate the Echuca agreement and I go back to the award rates and lose my entitlements, the financial impact would potentially mean selling the family home, reconsidering my children's schooling options and also moving town to find a suitably paying job. I also feel that the severity of the impact would be felt by the wider community, with substantially less money being afforded to spend in a country town. I know this because, as we are still locked out, a lot of the small community businesses have rallied behind us in support and in an effort to help us. Thanks.

CHAIR: Thank you. Does anyone else statement?

Mr Kyne: Yes. I am 40 years old and I reside at 10 Victoria Street, Rochester with my wife, Catherine, and three children: Blake, eight; Heath, six; and Sophie, four. I have been employed by Parmalat Echuca as a level 6 production operator for the past six years, and it is the only source of income for my family. For three years I have been an AMWU shop steward representing members at the Echuca Parmalat site. I am also a CFA volunteer, an active member for 20 years of the Rochester Fire Brigade. I am heavily committed to the community in many different groups and organisations, from the show committee to the kids clubs, sports clubs. I travel 66 kilometres daily from Rochester to Echuca return. I am required to work a rotation eight-hour shift pattern of days, nights and afternoons, starting Sunday to Friday.

Parmalat purchased the Echuca site from Fonterra in 2016, and under the sale agreement all employees transferred to Parmalat, and Parmalat inherited, and was committed to and accepted, the full terms and conditions of the Fonterra 2015 agreement. Since the Parmalat takeover, significant changes have taken place. A reduction in maintenance and production manning levels on the lines to save on wages has impacted the stress on line operators due to the increased workloads, including SAP, product quality and line checks, which require 15-minute taste testing and sample collections. Some of these critical control points are suffering times of up to 30-minute samples due to the pressures of keeping the lines running with lower manned machines.

Union delegates from the AMWU and ETU met with Parmalat site management and agreed to begin negotiations on 12 July 2016. Delegates also met with members prior to this meeting to have an endorsed log of claims to be presented to the company a week prior to the first meeting to make a head start on negotiations. We were notified that the company would have their log of claims available at the first meeting. Unfortunately, the company was not prepared and the unions did not receive Parmalat's log of claims until over a week later. When Parmalat's log of claims arrived, it was declined by all members, as it was a vicious attack on workers' superannuation and workers' rights to public holidays and was wanting to remove consultation clauses and remove in-house casual employment, some of whom have been employed for eight years, and replace them with labour hire. It also included casualising permanent position duties, accepting a four-year pay freeze and even decreasing the amount of union delegates from the site in a hope to reduce the availability to represent members on different shift patterns.

At our third meeting on 4 August 2016, Parmalat made the decision to stop bargaining and submitted a proposed agreement for members to vote on. The company was informed by the AMWU and ETU delegates that it would not be voted in or supported, but Parmalat still insisted on putting the proposed agreement to vote. The ballot was held by the Australian Electoral Commission on 18 August, nearly two weeks before the nominal expiry date of the 2015 agreement. The proposed agreement was voted on by members 59 against and five in favour. It truly showed that members were not going to accept the strict work conditions that were on offer from Parmalat.

Following the vote, Parmalat returned to bargaining with union delegates. However, this was as short-lived as the rejected proposal. Parmalat applied to the Fair Work Commission to terminate the existing enterprise agreement. This application was submitted only five weeks after the Echuca site agreement had reached its nominal expiry date. After the application was applied for, the Fair Work Commission set the 16 and 17 February hearing to be held in Echuca for 6 February 2017. The Fair Work Commission notified both parties that the dates had been changed and set down for 19 and 20 April.

This heavy-handed application was a surprise to us all. Personally, I was unaware that such an application could exist. If Parmalat was successful in terminating the agreement, the wage rates of all employees would be reduced at least up to 40 per cent. For me, as a level 6, that would mean $17 less an hour. This would certainly put my family in financial difficulties, let alone the emotional struggles we are dealing with now due to the lock-up. I would struggle to: make payment obligations such as my mortgage, make car loan repayments, send my children to a private school. And, as for the children, the little aths, Auskick basketball, cricket, ballet and martial arts classes would almost be guaranteed to be cancelled. Life in general is expensive. I work shift work for penalties I am entitled to. My take-home wage helps me to provide for my family; that is why I go to work—for them.

The termination of the agreement not only affects our rate of pay but our redundancy entitlements would be capped and stripped also. The unions and Parmalat continued to negotiate; although very little progress was made, and Parmalat continued its attack on working conditions on site and required a reduction in wages. In addition, the agreement termination application was a live matter and was used as a bargaining tool. In this situation, our union members at the Echuca site gave the company notice that we would take protected industrial action. This involved three four-hour stoppages of work on 18 January 2017 and bans on overtime and callbacks. One minute after the stoppage of work, at 3:01 am, Parmalat implemented an indefinite lockout of all employees on the Echuca site and chained the entrance gates locked. I was on day shift this day and was to start work at seven am. I was

travelling to Echuca and I received a phone call from the production manager at 6:40 asking if I was planning on taking part in the industrial action. I replied that at that 11 am I would be, and he then gave me an official notification that I had been knocked out of the Echuca site.

To date, due to the lockout, I am out of pocket by about 9½ thousand dollars. The cost of living continues. The Bendigo Bank has come to my aid. The local Campaspe shire has extended my rate payments. The St Jo's Rochester school has extended its fee dates, and the fine that I acquired in late December has also been extended—that is another story. I strongly stand by my fellow workers to oppose the Echuca site being terminated. And how dare Parmalat use this application as a bargaining tool towards satisfying Parmalat's agenda in destroying what is and what will always be an agreement in protecting workers' rights?

Mr Lucic: I apologise in advance for repeating some of what you have already heard but here goes. I am 44 years old and married to Jodie, a 42-year-old nurse. I have three kids, all girls. The oldest is Dakota; she is 14. Then there is Koah at 12 and, to finish, there is Molly at 10. I am a shift maintenance fitter with a C6 classification at Parmalat. I have been employed at the Echuca site for 16½ years by three different employers; firstly Nestlé then Fonterra and now currently Parmalat.

We as a maintenance crew are responsible for the plant reliability encompassing filling machines, services and environmental controls—yoghurt making right through to dispatch. This work is done through shifts which consist of a 24-hour five-day-a-week operation known as the 'eight-hour shifts'. In addition, we have another roster to cover weekend callbacks to field any fault and to conduct mandatory checks. In my time, I have also worked a 24-hour seven-day shift rotating through days and nights as well as having worked three years of permanent nightshifts. These patterns were known as the '12-hour seven-day' roster. There was one other shift we worked, which was a 12-hour six-day roster.

I am one of two metal delegates elected to the position in 2014. Parmalat purchased the plant in February 2016 and, shortly after, offered redundancies. We lost one more maintenance employee, bringing our numbers back to nine, which remain current today. Parmalat also changed the structure of the production shifts further, reducing the minimum number of people required to run the lines back to two. They also insisted the lines must not stop for tea breaks, leaving one operator to run three machines on the one production line.

We began EBA negotiations with the company on 12 July 2016. The company had our endorsed log of claims for over two weeks before presenting their aggressive log. On 20 July 2016, the company tabled their log. We were shocked at the severity. They wanted no pay rises for four years; they sought to replace clauses 5 and 8 with the model flexibility term; clause 9 was to delete employment security; clause 39 was to reduce employee representatives; delete clause 41, the engagement of contractors over permanents and allow labour hire companies in; clause 44.2 was a reduction in our superannuation; and they wanted to force us to work on public holidays. It was very clear to the members what the true intentions of the company were.

On 4 August, only our third meeting, Parmalat sidestepped the official negotiating party and put forward a request for a secret ballot direct to all employees. Whilst the viewing period was current, our factory manager, Christian Robert, threatened to close the Echuca site if the proposed agreement was voted down. I thought this was blackmail. The vote was conducted and the results handed down on 18 August were as follows: five 'yes', 59 'no'. The members were well aware of the disadvantages posed to the conditions and wages, along with the employment security.

On 3 October, Parmalat announced that it would be applying to the Fair Work Commission to terminate our agreement, barely five weeks past its nominal expiry. We were truly gobsmacked. I speak on behalf of the members I represent as well is myself. We were of the understanding that the status quo remained until the EBA was replaced. We did not think this could be possible. This was blackmail again. They were using this threat as leverage.

On 3 November, Louisa, our national HR manager, stated, 'The application to terminate the agreement would be withdrawn if there was agreement beforehand.' To further add, in her witness statement, which forms part of her application to the Fair Work Commission, Louisa stated, 'I believe that a successful conclusion to the enterprise bargaining negotiations is more likely if the Echuca agreement were terminated.' How can this be deemed to be negotiating in good faith?

Feeling the pressure since the application, the 70 employees were left with no option but to apply to take protected industrial action—our only lawful response. It was agreed to have a once-off, four-hour stoppage on all shifts commencing on 18 January at 3 am. I was on the shift that night and I clocked off. About 40 seconds later, exiting the security turnstiles, I along with others were issued a notice of an indefinite lockout imposed by

Parmalat. Here I sit before you today, eight weeks later, with no pay and still the threat of the termination in place.

This undertaking has placed huge financial and emotional stress on myself but, more worryingly, on my family. Jodie feels compelled to pick up the slack and is working ridiculous hours to keep some degree of normality. My mortgage payments are on hold and we have entered into payment agreements to service other bills. To date, I am approximately $13,000 out of pocket and going backwards with my home loan. I speak for myself, but I know many others are in the same or an even worse position. Essentially, our lives are in limbo.

We have continued to meet with Parmalat in an effort to end the lockout and get a resolution. Seven meetings in, on 20 February, the company again sidestepped the negotiating party and presented their version 2 of the proposed EBA to be put to a secret ballot. The vote was held on Friday, 3 March with 67 'no' and one 'yes'—I think everyone has been quoting 68. The company was invited to continue to negotiate immediately after but declined. Amazingly, this version 2 stated that it would withdraw the application to terminate if it was agreed by a ballot majority.

To recap, we have been threatened with closure if we did not vote the first proposal up, then Parmalat applied to terminate our current agreement. We responded with our only legal avenue and imposed a once-off, four-hour stoppage. After only 40 seconds into it, the company immediately locked us out for eight weeks—so far—then sidestepped the bargaining party for a second time; this time with the offer to remove the application if it was to be voted up. If the worst was to happen and I was thrust back on the minimum award, my wage would be slashed by over 50 per cent and my redundancy entitlements would be capped at 16 weeks along with the reduction in my super. I would have to sell the family home and uproot my girls to a cheaper education alternative, and there is no way I would work a socially unfriendly night shift on half the money. I cannot believe that such a mechanism exists that allows Parmalat, or any company for that matter, to not bargain in good faith and simply apply to terminate a longstanding agreement. Surely this should be a consensual decision.

I spoke with a mate of mine in town. He is a butcher named Luke. He has been speaking with other vendors in town and they all conclude that since the lockout business has, 'Died in the arse.' Punching some quick numbers, the greater Echuca community is missing around $840,000 shared between 70 families. Quite simply, this is an outrage.

CHAIR: Thank you. Until recently I had no idea who Parmalat were, because they are not actually known by the Parmalat name, they are known by their brands. You make yoghurt. What is the brand of yoghurt that is Parmalat?

Mr Kyne: Ski is the major one. There is also Soleil and Divine. Then you go off into the kids yoghurts. We do a lot of the Coles ones, like CalciYum, and Milo.

CHAIR: And what do they do at their other factories, because they are actually an enormous company, aren't they?

Senator McKENZIE: Italian.

CHAIR: Yes. What else do they make in Australia?

Mr Lucic: In Bendigo they make a lot of custards and Oak brand flavoured milk. They also do yoghurts. Since we have been locked out they are currently making products that we would have made.

CHAIR: And where does Parmalat sit on the worldwide scale of dairy-type food companies?

Mr Lucic: They are the biggest dairy manufacturer in the world. They are the second biggest food company in the world, second to Nestle. Mr Besnier is 4½ times richer than Donald Trump.

CHAIR: That is richer than God.

Mr Lucic: They are big.

Senator McKENZIE: Let's not dissect the American presidency.

Mr Lucic: It is a good comparison.

Senator McKENZIE: They are big. They are very big.

CHAIR: Yes, they are big. When they bought the factory from Fonterra, was the factory a profitable factory as far as you know?

Mr King: What we can say is that this is a purpose-designed factory for dairy desserts and yoghurt. We believe it is widely recognised as the most efficient site, in terms of manufacturing those products, because it was established in 1980 and there have been hundreds of millions of dollars invested in that site. That was why it was

so attractive to them: to get the most efficient site in terms of manufacturing these dairy desserts and yoghurt products. It has a wide reputation to that effect.

CHAIR: In their negotiations, have they said to you they are losing millions of dollars?

Mr King: They have put arguments in terms of their decreases in volume associated with the product range there. They have put arguments to that effect. There has never been an argument in terms of they are losing money or they are without profitability. The last public statement of Parmalat Australia, in terms of its profitability, was for 2015 and their profitability was $58 million. I believe they are widely recognised as the most profitable milk company in Australia by a long way. Clearly, they are a long way ahead of Murray Goulburn and a few other players in the industry at the moment.

CHAIR: Why was there a threat to close the factory? I think I know why, and you have said it was blackmail. Surely the threat to close a factory must be, 'Because, if we don't get this, we won't make enough money,' or is it purely, 'We're just going to close the factory and put you all out of work unless you agree to this'?

Mr King: There is probably a little bit of background that could be put to it. At the moment, Parmalat effectively have four sites where dairy dessert type products are manufactured: South Brisbane, Tamar in Tasmania, Bendigo and Echuca. The company has made a decision to get out of dairy dessert products in Brisbane. Effectively, there is a dramatic reduction in the availability of milk in that area. A lot of suppliers have pulled out. There has been a lot of media coverage on that. There has been no money invested in the site. It is crystal clear they getting out of Brisbane, and now they finally acknowledge that, even though they did not acknowledge it at the time that Mato spoke of.

I have some involvement in the Bendigo site as well. It is effectively a milk manufacturing site that has been adapted to manufacture certain dairy dessert products. It does well, I know that, but it is not a purpose-built site. And then there is Tamar, which is across in Tasmania. The company has made it clear that they are looking at a rationalisation. We believe all the indicators are that Echuca is the most efficient site, but they effectively want cheaper conditions. That is what they really want. So there is no inherent economic requirement, it is just their objective to make more money than they do at the moment that is dictating that in terms of how they implement and complete the rationalisation.

Senator McKENZIE: Just on that, Mr King: given that it is a purpose-built site in Echuca, over and above, with obviously a product that has a much higher margin than regular milk does—and the growth of the Victorian industry as opposed to the Queensland industry—would you be making the argument that if they are rationalising then they should rationalise to Echuca rather than to Bendigo? Essentially, what the lockout has created is that they are doing your job in Bendigo.

Mr King: To some extent they are doing the job. We do not run that argument. Ultimately they will make their decisions.

Senator McKENZIE: So, you want them to keep both open.

Mr King: I am not running either of those arguments at all. The nature of the situation is that Parmalat and Lactalis will make their decisions. We think certain economic imperatives will point them in a particular direction. But I do not advocate either way. I do not advocate that any members should be out of a job. I definitely do not accept the logic that we are making a considerable amount of money at the moment and should be able to make more by driving down conditions as well as getting the efficiencies that will be associated with the rationalisation.

Senator McKENZIE: Well, we know the dairy farmers last year were not actually making any money either, so—

Mr King: I can assure you that there has never been a proposal put to us that the money they make out of reducing wages here—

Senator McKENZIE: Will go into milk price—

Mr King: or in terms of improving their own efficiencies that one cent will be directed to dairy farmers. I have never heard a suggestion of that. It will be profit that will go to Europe.

CHAIR: Who made the threat to close the site?

Mr Lucic: It was Christian Robert, our interim factory manager.

CHAIR: Was he left over from the previous management?

Mr Lucic: No. He has been brought in from France to oversee the running of the new plant, and in his words possibly the expansion. They have been suggesting to us that the expansion will go ahead in Echuca—it was scheduled to be in Bendigo—if they can get the EBA they want. And then he said, 'If we don't, we will close.'

CHAIR: When does he come from France?

Mr Pankhurst: He came from France not long after they bought the factory in February 2016.

CHAIR: So, there was a vacancy for the site manager—

Mr Pankhurst: There was, yes.

CHAIR: and he applied for it?

Mr Pankhurst: No, I think he is a Parmalat man and he goes from Parmalat factory to factory as an interim manager. One of his main roles is, as I said, to go to factories, and he is very knowledgeable on yoghurt and dairy dessert. He will go to places—normally a three-year tenure—and implement new efficiencies and ideas, and a lot of the time he is there for negotiation periods as well.

Mr Lucic: From what we understand, his last position was in Egypt. He has mentioned in meetings with us that he was last engaged over there.

CHAIR: In a similar role?

Mr Lucic: Yes.

CHAIR: What was the outcome in Egypt? Are you aware? Has he told you?

Mr Lucic: One thing that sticks clear with me is that he was quite chuffed about his achievement to get the plant to riot against each other.

CHAIR: To riot?

Mr Lucic: Correct. He thought that was a feather in his cap.

Senator McKENZIE: Well, that is very French, isn't it!

CHAIR: So, he lists that as an achievement. Does he list any other achievements from Egypt?

Mr Lucic: Just from speaking with him, I would say that he is extremely intelligent with his food manufacturing principles, but there is a lot to be desired with his people skills. That is purely my personal take on it.

CHAIR: Mr King, you might know this: was there a skill shortage in yoghurt production management in Australia?

Mr King: I have not heard of it. As we have indicated, there are at least six or seven sites that I can think of that are involved in yoghurt and dairy dessert manufacture, so I would have thought there would be quite a few candidates around who could have industry experience and be candidates for that job. It is the first time I have come across someone being brought in from overseas for that sort of job.

CHAIR: So you were not aware that it was advertised? It was not market tested? I do not suppose anyone would be aware of what sort of a visa he is on. Or don't you need visas to come in?

Senator McKENZIE: Isn't it in Parmalat, though? Isn't it an internal—

Mr Lucic: Parmalat is an Italian company which I believe is now 100 per cent French owned by the Lactalis group.

Senator McKENZIE: Could it conceivably have been just an internal shift rather than—

Mr Lucic: I would think so.

CHAIR: Well, we will have to ask that question. I do not know whether that is even legally—whether that is even possible—

Senator McKENZIE: I like my milk manufacturing! It is a very specialised area of senators' interests!

CHAIR: Is there some level where you do not need to do workforce testing to bring people in? There may well be; I do not know.

Senator McKENZIE: I would have thought a company should be able to shift around their management team.

CHAIR: All right. I am not sure I have that many questions, because your presentation was fairly detailed, but I am particularly interested in the termination of the agreement. How many negotiations did you have where they targeted issues that were so important to them that they needed to terminate the agreement? It has been operating

under Parmalat's management for a couple of years now. How often have they raised these particular issues in the agreement that obviously are the driving force for the termination of it?

Mr King: It is very difficult to know. As you say, we have seen this application being used, as the representatives spoke about, as effectively a bargaining chip. There is a significant element of it being used as leverage: 'Look, we could go to court. There have been some court decisions recently where such applications have been successful. You guys could be taking this risk of also having a similar decision; therefore, you should agree to changes that we put forward.'

I think the classic example of it was one week into the lockout. At that stage we were about three weeks away from when the hearing was supposed to occur. Everyone was focused on that date. The decision on the power station in the Latrobe Valley had just come down—the workers had lost out; they had been unsuccessful. Everyone was aware of that. Parmalat then put forward, 'Oh, we've come up with a new idea. You guys get a nine per cent pay rise'—more than what we were actually seeking; that is what they proposed—'provided you're prepared to agree to everyone else who comes in being on 20 to 22 per cent less.' That is basically saying, 'You sell out and lock people who aren't here into a significantly inferior and discriminatory deal.' That is what was done. The workforce, on this occasion, had their principles. We just cannot do that. It is just totally inappropriate to do it. I think that is the manifestation. It is the classic example of what this strategy has really been about. It has been about using it as a lever, a point of pressure.

We have gone through an extensive negotiation process. The company have raised claims in terms of how they consult with the workforce, how change in the workforce is implemented and how supplementary labour, whether it be casual or contractors, is dealt with. We have worked through all those issues. We believe we have in-principle agreement on the change matters and in terms of how they consult with the workforce on these matters. That was probably their headline item, to be frank with you. We also believe—and obviously no agreement is reached on anything until an agreement is reached on everything, as part of a normal negotiation—that we have made some progress in terms of the engagement-of-labour issues and the security-of-employment issue. We have not reached a final conclusion. But we believe it is totally inappropriate, when you have a workforce that has worked through all these difficult matters and where considerable progress has been made but we are not in agreement yet, that we still have this looming threat hanging over us; we still have a situation where it is put forward. As the guys alluded to on 20 February, it was actually in the negotiation offer that we will terminate the application. It is not a subtle thing; it is not an invisible thing; it is a point of advocacy: 'You will not end up like the power station workers if you cop this.'

We think we have made process on the substantive issues. We are still not there. We should be in a normal enterprise-bargaining situation with this company and working these issues through. We only took industrial action as the last resort, at the end of the day, when we were facing, effectively, termination and losing any right to take industrial action under the act.

CHAIR: Do you think the termination of the agreement gives the employer an advantage that you do not have and is more likely to lead to an outcome?

Mr King: I think the termination application has brought about, to a large extent, the situation that we are in. That is effectively what has occurred, because we only made the applications—when I say 'we', I am talking about both unions—for the ballots and the right to take action after they had lodged their termination application. We had to resort to that to give ourselves some armoury. We extended the right to the taking of industrial action by 30 days to 60 days because we wanted to try to negotiate things through. We took the industrial action within five or six days of when we would lose it under the act, and we took a pretty minimal, low-level form of action. Effectively, what we have is that the termination application has brought about a situation where we have taken what we have taken and then they have used that to trigger an indefinite lockout under the act, because they can only trigger a lockout after workers commence taking some form of industrial action. So, in fact, it has not in any way assisted. It is a totally inappropriate thing to do for the reasons the guys have articulated, but it has been a significant factor in bringing about the situation we have now of an eight-week long indefinite lockout that is still in place.

CHAIR: There is one thing I am just not clear about. You talked about some of the flexibilities that the company had achieved prior to these negotiation outcomes. I think you said there was a reduction in maintenance by one and that the staffing on the lines reduced from three to two.

Mr Kyne: From three to two and from four to three.

CHAIR: Also, one person managing it during breaks?

Senator McKENZIE: Tea breaks.

CHAIR: Is that a significant change?

Mr Kyne: Huge.

CHAIR: And that was done prior to these negotiations. So change obviously can take place prior to negotiating an agreement, and some change has happened.

Mr Pankhurst: It was quite interesting. We had a lot of faith in our factory manager, Christian. We thought, 'This is the manager that we need.' He came across as a really good, knowledgeable person and we thought, 'He knows a lot about this.' So a lot of the workers did everything they could to implement all the changes that he wanted, which included the manning levels on the lines—which these guys know about than me because I am an electrician. He had set figures that he needed to achieve: how many kilos of yogurt per second we could produce. When we got there we were not at world standard. We implemented those changes and we got down to the numbers that they were aiming for and, as soon as we hit those numbers, our volume magically went to Brisbane, Bendigo and Tamar, and we started getting the story about how we had low production volume, and that is what brought about their log of claims about reducing costs and everything like that. It was as though, once they had worked out how good this factor could be, they started hammering us.

Mr Lucic: To the point: Christian was—and this is only hearsay—accused by his fellow factory managers at a Parmalat meeting that his figures must have been fudged because he could not turn a plant around that quickly. We went down from something like 90 seconds per kilogram to about 18.

CHAIR: Again, I must be missing something because often you hear employers say, 'This agreement is so rigid. There is no flexibility. There is no ability to do things. It locks us into processes that are not efficient for running our business,' or 'We're losing money hand over fist. We have to do this,' but I am not hearing any of that. I am hearing that there is actually flexibility within agreements and a willingness of the workforce to comply and work with management to achieve outcomes; I am hearing that the outcomes have in fact been achieved. It is as though, 'We've got all those things. At the time to negotiate an agreement, let's get everything.' Am I wrong? That is my conclusion from what you are telling me. We will see Parmalat at some point and we will ask them why these tactics have been used and see if they can justify them, I suppose. There was the termination of the agreement. Mr King, do you understand why there are provisions in the act to terminate agreements?

Mr King: I have been a union official for 27 years. I have not followed the progress of changes in the Fair Work Act over that time. My understanding is that, when those provisions first went in there, they were really an administrative arrangement to clean up the filing cabinet. That is what I was told when those provisions first went in there: you would keep having a whole heap of agreements sitting there that are absolutely redundant and no longer exist, so therefore there should be an administrative mechanism to rationalise. That is what I was first told when I was a union official and I asked the question: 'What's this provision about?' That has always been my understanding of the provisions. It has only been in recent times that I have heard any suggestion that they are there for any different purpose.

It is probably a bit of an historical thing, but I think it is appropriate to say this. Historically, in the mid-1980s, we had the coalition basically say that wages should be set at the enterprise, not at a centralised wage-fixing system. Effectively, in the early 1990s, the ALP accepted that view as well, that we should move to enterprise bargaining, we should set wages there and we should have a minimum statutory safety net that is the awards. That is the purpose of them, not like they were in the seventies and eighties—supposed to have some market relationship and then adjusted in accordance with the market requirements for labour. That is what we did. That is what this workforce has done for 20 years. There have been a lot of efficiencies generated, whether it is picking up new skills, manning level reductions, new classifications, new work practices—a whole revolution in technology. At this workplace, you would find people working six- and seven-day rosters, all adapting themselves, skilling themselves up and making a more efficient workplace. And, in that context, people are supposed to bargain their wages and conditions. The current 2015 enterprise agreement is a result of that.

That was where we were. Everyone has always understood that those conditions that are negotiated are accepted, and it effectively takes the agreement of the parties to change. To then say that we should have it stripped down and to go back to what was a statutory safety net, when we have gone through all of this process of change—we believe it was never the intention. We actually believe it is wrong in terms of what, effectively, the government and the political process have said people should do as workers. These workers have adapted to a lot of change. They should not have the rug pulled out from underneath them so that Parmalat can maximise its profits when it thinks it is advantageous.

Senator McKENZIE: I would like to get your thoughts about the shift of the date out to April, and the implications of that, Mr King.

Mr King: My understanding of what occurred there was that, effectively, Parmalat made its application to terminate in early October. The Fair Work Commission did not bring it on for process, in terms of setting out how the application would be dealt with—

Senator McKENZIE: Until February?

Mr King: until early November. It basically took three or four weeks until that process occurred. I was not in the commission that day, but there were processes in the commission with the representatives of the two unions and Parmalat. Then, effectively, a process was set in place where the company would make its submissions in terms of its argument. I think it had six or seven weeks to do that. It probably took until about two weeks before Christmas. The unions then had a period of time to lodge our response—a similar period, taking into account Christmas and New Year—and then, in terms of responding to our submissions, there was a final response from Parmalat due in early February. That hearing date was set in mid-February. That was actually set in early November. I do not speak on behalf of the Fair Work Commission—

Senator McKENZIE: No, I know. So, you had this date—

Mr King: We had that date. This is a 'process that is agreed' sort of thing, a 'we do not like it, but that is what is happening' sort of thing. We were going through that process. Then we—when I say 'we', I mean both unions—lodged our submission in response to Parmalat's submission. Then, a couple of days after that, effectively, the Fair Work Commission said that the deputy president was busy with other matters—that there was a heavy workload going on there—and therefore it was postponed. To be fair to him, my understanding is that the deputy president wanted to postpone it for four weeks. I think it then struck problems with representatives of the company and representatives of the union in terms of lining up a date that suited everyone. That is why we ended up with this date in the middle of April. That is what occurred. We do not want the application. We do not want it at all. It was not our decision, but we were not upset by it being postponed. Our view is that we want to reach an agreement with Parmalat, but, if it is there, we prepare ourselves and we deal with it. That is about all I can say.

CHAIR: I would not mind your thoughts on this. An application for termination of an agreement, I guess, is assumed to be seen as a last resort if the agreement does not work. Obviously, there is no agreement between the parties, otherwise they would simply put a new agreement in place. Do you think a successful application for termination of agreement should automatically lead to arbitration?

Mr King: There is an argument that way. I have to admit, I have not really fully thought it through myself.

CHAIR: Again, I will broaden this out so maybe you can give a more considered answer. They are simply saying to a workforce that they will now go back to the lowest legal minimum wage and set of conditions that can legally be paid in their circumstances—from whatever has been a negotiated agreement, which, in your case, has been developed over 20-odd years. Rather than terminating an agreement, I can see the attractiveness for an employer to use this as a bargaining tool. It is a pretty serious and blunt instrument to apply. But, if the instrument did not lead to the lowest legal minimum wage but led to an arbitrated outcome—which they also have to take some risks on, and they do not know what the outcome will be—it may get used in different circumstances.

Mr King: Thanks for the clarification—or the elaboration—about where you are coming from. My view, if I can have a view on this situation, is: we think we should have to reach agreement to change things, but, intellectually, it makes a lot more sense. The termination is an incredibly crude instrument. It is basically saying: its life or death—off with your head or you keep your head. It is not to say that we actually deal with the issue that is in dispute. There is an argument to say that if the company really believes there is a fundamental problem with this agreement that impairs its operations, and that seems to be the argument that is being mounted, the there is pretty strong logic to say that we should be addressing that.

Look at Adam as an example. Basically, if he was made redundant, he would be entitled to 58 weeks redundancy pay as it stands. Should we move to a situation where he has only got 12 weeks redundancy pay when, sensibly, the arguments are around the finer points of a few consultation and change provisions? There is pretty strong logic to say: if there really is a problem, the system should be addressing that problem rather than taking away everyone's rights and bringing about a catastrophic result in terms of the entitlements of employers. So I think there is merit in that—if we are going to move to a different system. Those are just my thoughts.

CHAIR: May I just finish up on this. Mr Pankhurst, you gave us a bit of a history about your employment, starting from your apprenticeship stuff. I take it you are an Echuca boy—

Mr Pankhurst: Yes, I am—born and bred.

Senator McKENZIE: It is a big name around those parts!

CHAIR: You better take note then, Senator McKenzie! I think you indicated, and I might have missed this, that if your employment opportunities there end, you will have to end up going to the city to work—is that right?

Mr Pankhurst: I will. For me to find something comparable to what I have geared my life around, I would not be able to stay in Echuca. I would have to move to a city or even, potentially, find fly-in fly-out work in the mines, and that is getting pretty limited now too.

CHAIR: I understand that this plant is a pretty high-tech plant.

Mr Pankhurst: Yes.

CHAIR: And you are an accomplished electrician?

Mr King: Thank you, yes.

CHAIR: That was probably a rhetorical question! But the point I am making is that there probably would not be a lot of other employment opportunities for an electrician at your level of program-controlling and systems management.

Mr Pankhurst: No, there is not. The only other opportunities in Echuca for me would be the two factories either side, which would be Simplot or Heinz. It is pretty limited to get into there because, unless people retire, no-one tends to leave those factories because it is quite good employment.

CHAIR: Thank you. You are still in negotiations. This inquiry is going to go for some time. We are not making recommendations until August, but we are very interested in the termination clause and also about how that leads up to your negotiations. We have invited Parmalat to speak to us. They have indicated that they will come and speak to us, but they could not come today. So we will schedule a hearing where they can come. Hopefully, by the time they appear before us, and I sincerely hope this, that this dispute is well and truly over and resolved. The committee would be very pleased if you would keep us informed on the progress of your negotiations and, hopefully, a successful outcome that suits everybody.

Mr Kyne: We will do that. Thank you

BEKHAZI, Mr Kamal, Research and Project Officer, Health Workers Union

EDEN, Mr David, Assistant Secretary, Health Workers Union

[12:01]

CHAIR: Welcome. I understand that information on parliamentary privilege and the giving of evidence to a committee has already been provided to you. Do you have any comments to make on the capacity in which you appear?

Mr Eden: I have been working in the health and aged-care sector since 1988, and I am here to represent members who are working in the health sector, the aged-care sector and in disability services.

Mr Bekhazi: I have also had significant experience working in the health sector, particularly clinical psychology.

CHAIR: I will shortly ask you to make some opening remarks and they will be followed up by questions from the committee. Perhaps you could clarify something for me. You said you have been working in the sector since 1988, not as a union official but as a practitioner?

Mr Eden: Yes, nursing.

CHAIR: To be honest, I would not mind just understanding a little about that experience and when you started with the union, so we can put that into perspective.

Mr Eden: Yes—a colourful story.

CHAIR: Oh, then maybe we don't want to know!

Mr Eden: It got more colourful towards the end. In 1988, I did hospital-based nurse training, so I am an enrolled nurse. In 1989, I completed my enrolled nurse training and became active in the union movement. So I joined as a student in 1988. I had been involved in the union involvement. I took some leave in 1990 and when I returned, I had most of my worksite congratulating me and it took me a good week to work out exactly what had taken place while I was off on leave, and apparently, I was elected as the shop steward at that particular site. That involved me getting more actively involved in the union movement on that particular site—at Ballarat Health Services Queen Elizabeth Centre.

After a period of 10 years, I suppose, in 1998 Jeff Kennett took away payroll deduction of union fees in the public system, which decimated not only our union ranks but also many other union ranks across the public sector in Victoria. With that, the union asked me to come and assist them to rebuild the union. We were down to 12,000 members at the time. We were 30,000 prior to the removal of payroll deduction. I gave them a commitment of five years and, in that five years, we took the number to well over 20,000 members, and I went back to the coalface.

During my time at the union, I was proud to be involved in 'Wayne's world'. Before Commissioner Blair, we were able to negotiate a nurse-patient ratio for Victoria and I returned to the coalface to see just how well it was being implemented and whether or not it fixed all the issues pertaining to nursing. I would say it addressed around 90 per cent of the issues facing nursing. Those same issues still occur to this day.

After working back in aged care and then in the private sector hospitals—St John of God Hospital, Ballarat, which is probably one of the best employers I have ever worked for—I was approached again to assist to rebuild this union after Kathy Jackson and crew absolutely destroyed it in a period of eight years. When I left there were over 20,000 members, and when I returned there were 7,000 left. In the last four years we have more than doubled our size again, and when we took over there was not one enterprise bargaining agreement that was actually in date. Over 400 agreements later, we have pretty much got 85 per cent of all of our agreements up-to-date, and we are still working hard and regaining our membership's respect and confidence.

Mr Bekhazi: As I said, I have been working as a clinical psychologist for some time—initially as a case manager in an area mental health service, working with people with severe mental illness such as schizophrenia or bipolar disorder or people who had a likelihood of developing one. Go forward 10 years and the job that I was doing prior to joining the Health Workers Union was working as a senior psychologist at St Vincent's Hospital in Melbourne on the CAT team and psychiatric triage. I imagine you would know of those services. The CAT team is basically a senior team that is called out to doctors surgeries, to public, to homes where people are a significant risk to themselves or to others, be that suicidal or homicidal. Their role is to stabilise the situation and make a decision as to whether to admit, to take to an emergency department or to treat at home.

The other aspect of my role was in psychiatric triage, which is basically the emergency department at St Vincent's Hospital, where you would either take telephone calls from concerned parents or neighbours, police or

from the patient themself. You would also deal with walk-ins into the hospital, so you can imagine that Thursdays, Fridays and Saturday nights were particularly busy in the emergency department. Very often we would get police bringing people in under section 10 of the Mental Health Act for review and assessment to determine what to do. Often you would get a mixture of people suffering from mental health issues and polysubstance abuse; that is what we saw a lot of.

I have been working for the Health Workers Union for four years now, as a research and project officer. One of the reasons why I left working as a psychologist was due to culture, and due to resourcing issues—we were often under resourced and we had to make life-and-death decisions. You had to basically weigh up the fact that the emergency was on bypass, there were no emergency beds, the psych ward was full—so what do you do? You call around and there is no bed at any other hospital. There were some systemic issues there that really concerned me.

In addition to that I noticed that a lot of the workers that we represent now at the Health Workers Union—cleaners, personal services assistants, personal care workers et cetera—did not receive the standard of training that we received as allied health professionals, if they received any training at all. They were asked to assist in the emergency department, for instance, in restraint. You would have a junior patient services assistant being asked to assist in a restraint in the emergency department when they had not been trained in that area, and if they refused I would often hear their charge nurse or the ANUM basically threaten to discipline them. These people were completely frightened; they had no training. Some of these issues led me to think that I could, hopefully, make a lot of change and do a lot of good at the Health Workers Union. We have been working on a lot of these issues since I have been there, and today we would like to raise a number of issues.

CHAIR: Right, we will go to that now. Thank you for that. I think it is important for us to understand your personal experience and background when we are hearing some of the things we are about to hear. I will talk to you later about your assessment of Senator McKenzie's state of mind privately, given we are always scared of the Senator talking.

Senator McKENZIE: Not in front of the children, Senator Marshall!

Mr Eden: There are probably three subjects that I would like to focus on, and Kamal has some other subjects that he would like to focus on. We will bounce off each other quite a bit, if you do not mind. Is that okay?

CHAIR: That is absolutely fine.

Mr Eden: The three subjects I want to really focus on that are becoming more of an emerging problem in our sector are: outstanding entitlements and how we are able to get those underpayment of wages for our members; transmission of business, which is a real concern for us—employers are getting smarter at avoiding their obligations—and workplace bullying and harassment, which is an absolute scourge within the health sector that needs to be stamped out, and how the Fair Work Commission can be involved in that process.

Mr Bekhazi: As David said, we will bounce off each other. I would also like to touch on terms of reference (a), (h), (i) and (k) if there is time. We will start with David. I would like to talk about the use of labour hire and contracting arrangements that affect workers' pay and conditions. I would also like to talk about some of the aged-care facilities in rural and remote regions that are hiring people with visas. I would also towards the end like to talk a bit about the effect of lower workers' wages and conditions on the economy.

Mr Eden: Over the last four years our union has managed to recoup around $6 million of entitlements for its members. These have obviously accrued over a period of six years—some of which was prior to us taking over the leadership of this union. When you have a totally dysfunctional union that is not taking care of its membership some employers will endeavour to take advantage of that. Obviously this has been the case. So we have so far recovered $6 million and we have identified many more cases of underpayment of wages that we are still pursuing.

The problem we have is that, if you are non-member of a union, really the only option you have to recoup any underpayment of wages is to go through the Fair Work Ombudsman, which usually involves a 90-minute teleconference. They can give some recommendations around those underpayments; however, from an enforcement point of view, they have to do the same as our union and that is to take claims either to the small claims tribunal if less than $20,000 is owed to the employee or to the Federal Circuit Court if it is more than $20,000. This is a really costly process. It is also costly for the Ombudsman and they have, rightly so, prioritised minority groups—juniors, apprentices, visa holders et cetera—when pursuing underpayment of wages. However, with our membership we pursue the underpayments as we find them.

I will give you an example. At the moment we are expecting to spend in the vicinity of $100,000 to get around $50,000 worth of entitlements for one individual who works for Homecare Plus here in Ballarat. There needs to be a better system. I think the Fair Work Commission needs some teeth around this. It needs to be able to order

underpayment of wages to be rectified. For the average individual to try to pursue this the costs outweigh what they are going to get in return. As I said, for our outlay of $100,000 we are going to get for that individual member approximately $50,000—

CHAIR: Potentially.

Mr Eden: Yes, potentially. So businesses are basically calling our bluff and calling their employees' bluff because they figure they can get away with it. In fact, the bigger the amount of money owed the more blatant it is because if it is less than $20,000 at least you have got the small claims tribunal to try to recoup that money in, which is a no-fee system. When it is more than $20,000 that is when our members or nonmembers, just employees, have to really fork out some big dollars to get back their entitlements.

CHAIR: How does someone let an underpayment get to that sort of level in the first place?

Mr Eden: Quite often they do not know what their entitlements are. I think some people—not so much in our sector—might try to use it as a compulsory saving scheme, if you like. They will deliberately undercut other people for the same labour, knowing full well they have six years to go back and do a back-pay claim on these organisations. I think they run that gamble. The APCO workers et cetera probably ran that gamble as well. They have said, 'I'm going to work cheaper than this guy here.' But they know that at the end of the day they have legal means to recoup those underpayments of wages. Some people are using the system while others are oblivious to what their real entitlements are. Some of the modern awards are quite confusing to read for the average person. They do not realise what they are entitlements are.

Mr Bekhazi: I imagine you would have a lot of people that are fearful of raising underpayment issues with their employer, especially if they really need a job, and especially if they have seen their employer sack their previous colleagues when such issues are raised. People have mortgages, they have families, they have bills to pay, and depending where you are at, and what area you are in, it is pretty hard to get a job. Hearing from our members from here all the way up the west Wimmera and all the way down to Warrnambool, it is really hard to get a job.

Mr Eden: Especially in areas where there is a high casualised workforce.

CHAIR: It is a fairly niche occupational area that you cover but probably still fairly large. Some of the evidence we heard earlier was that even in a place as large as Ballarat, the employers know each other and the actual threat, 'I will sort you out, so you won't get work anywhere' is a real threat. In your area, the health industry, employers would know each other. Is that happening in Ballarat? If that is happening in Ballarat, and everywhere else is smaller as we go out further, it must be more and more difficult.

Mr Eden: Yes, I think it is. It is not quite often around outstanding wages and entitlements that employers can make it difficult for you to work elsewhere. I will give you an example of the workplace bullying and harassment issues. Workplace bullying and harassment was so extreme here at Ballarat Health Services that there were three independent investigations launched, with WorkSafe overseeing the investigations. Those reports labelled particular individuals as 'workplace bullies', and as a consequence the board spilled those positions, readvertised and filled them with other individuals and the alleged bullies moved on. Where did they move on to? They moved on to smaller regional hospitals around this area; to the very hospitals that the victims of the bullies fled to.

For example, there are at least five individuals who were victims of bullying and harassment at Ballarat Health Services that fled to Hepburn Health Service, which is Creswick and Daylesford—just down the road—because it was a safe haven. Hepburn Health Service was a really good employer. Where do some of the bullies go? They are now in management positions. One of them is now the deputy CEO of Hepburn health. How fearful do you think those individuals were who named these people in this report? As a result, now they are resigning from Hepburn health and going somewhere else, or are totally disillusioned and leaving the industry altogether. Does word spread in relation to, 'This person knows what their entitlements are, so you shouldn't employ them', does not face our sector. But there are other influences there that prevent your future employment within this industry and bullying is one of them.

Mr Bekhazi: I am not sure you heard about this. There was bullying in Ballarat Health Services with our members—the cleaners, personal care attendants and personal service assistants. There was significant bullying in the mental health ward. There was also significant bullying on junior surgeons. It was in the media a lot. The Auditor-General of Victoria conducted an investigation and found that a lot of these—Ballarat Health Services and a number of other facilities that he looked at—did not have adequate procedures and policies. There was not adequate training. This has led to a task force that the health minister has developed. It is the task force into bullying and harassment. David is on that task force that the minister has developed. Even while all of this is going on—the Auditor-General's report, two other reports and the task force developed by the minister—we are

not seeing any significant change on the ground. We are still seeing similar behaviours occurring and we are still seeing people recycled to other organisations.

Mr Eden: We are reluctant to take issues of bullying and harassment to the Fair Work Commission, especially after the 2014 precedent, Shaw v ANZ, where the union took Shaw's case to the commission. He was sacked prior to the case being heard, so the commission could no longer make orders to cease the bullying and harassment, because he was no longer an employee. So we are reluctant to take issues in relation to bullying and harassment to the Fair Work Commission, as it currently stands, because there is simply not enough protection around individuals making those complaints to the Fair Work Commission. We would rather take it through WorkSafe at the moment, although we think that they are possibly underequipped for the size of the issue that is out there. For example, Austin Health had its latest suicide on 24 January in relation to systemic workplace bullying and harassment and there have been four other attempted suicides there over the last 12 months. WorkSafe are under-resourced and ill-equipped to deal with the magnitude of workplace bullying and harassment in our sector. As I said, we would probably take more matters to the Fair Work Commission but we fear for the fact that these people will be sacked before they are given an opportunity to be heard before the Fair Work Commission.

CHAIR: Are you able to provide some details of that example? Because I think that is an interesting—

Mr Eden: It is Shaw v ANZ and it was in 2014 at the Fair Work Commission, number 3408.

CHAIR: Thank you.

Mr Bekhazi: To make things even worse, if you actually have a look at the statistics from the Fair Work Commission in relation to bullying and harassment cases that have been taken there and where the victim actually succeeds or wins the case, it is rare. I think there have been less than a dozen since the stop bullying part of the legislation was adopted by Fair Work. It is really rare to actually win a bullying case at the Fair Work Commission. I guess, if you think about it, you need witnesses, don't you. It is not enough for you to take notes, you need your work colleagues to go and testify against their own employer and unfortunately a lot of people think about themselves, their families and their mortgages; they are not going to become a target of their employer because they have gone and testified against them. That makes it even more difficult. That is just another complicating factor or an additional factor to those that David has mentioned.

Mr Eden: If you have got witnesses in the workplace that would be required to go to the Fair Work Commission I think the employer would be fairly loath to give them the time off to attend the commission in the first place.

CHAIR: Let's move on to some of the other issues that you mentioned.

Mr Bekhazi: We will briefly touch on term of reference (a), which refers to the use of labour hire or contracting arrangements that affect workers' pay and conditions. What we have been seeing over the last two decades within the healthcare sector—it is not just hospitals, but in aged care, disability and in community health centres as well—is workers being placed on involuntary part-time contracts. When I say involuntary, what I mean by that is the Australian Bureau of Statistics last week or the week before released some statistics after surveying a few thousand people who were working part-time, and they found that 90 per cent of these people would prefer to work at least an additional 15 hours a fortnight, if that were available to them. What we are seeing is that they are being put on permanent part-time contracts with a stipulated minimum of eight hours a fortnight, but the employer usually uses them as full-time workers, or probably just under that. They do that as a means of control, basically. So if the worker gets out of line, does not toe the line, does not conform to the culture or standards—whether they are good or bad; if an employee dares join a union; if an employee dares raise occupational health and safety matters; if an employee says, 'Hold on, you are asking me to do additional duties and functions that are not part of my position description,'; or if the employee says, 'No, I have to go home, my shift is finished and I am not going to do additional overtime for free,' then what we are finding is the following week or soon after they are told, 'You are back on eight hours a fortnight; you no longer have—'

Senator McKENZIE: Are you saying that they are doing overtime for free? It is what you just said.

Mr Bekhazi: If they refuse to do overtime

Senator McKENZIE: Overtime for free?

Mr Bekhazi: They may be basically put back onto the—

Senator McKENZIE: Volunteer overtime?

Mr Bekhazi: Yes, basically. This is widespread. Feedback from our members to our organisers and that comes to David, our secretary and myself is that it is happening in so many facilities. I will give you an example. Aged care facilities are often under resourced and understaffed and so your shift is finished way before you get

through the chores or the duties and functions you have to achieve to make sure that everybody is fed, everybody is showered, everybody has done what they have to do. You stay back just to make sure that these residents get what they need, the care that they need. What we find in the aged care sector and the disability sector is there is a particular type of personality that likes to work in that sector. They are usually caring people and are usually people who are willing to volunteer their time because they care for the people they are caring for. What we are seeing is that if somebody does not take that path and stands up and says, 'Hold on, my shift is finished; I am going.' Then there is retribution, basically—that is, you are no longer getting your full-time hours; you are going back to the eight hours a fortnight. As they say, 'If you do not like it, leave.' And, unfortunately, they leave.

Mr Eden: We had an organiser that was supposed to be appearing here today who recently spent some time at Ballarat Health Services hospital. She spent just on 10 days there and every day she was seeing the same individuals on a rostered basis going and putting fresh water jugs et cetera through the ward 45 minutes before their actual starting times. When she questioned them about it, it was the only way they could get their work done and they were not getting paid for it. It is very widespread. It is not just in the private sector but in the public sector in some of the largest regional hospitals in Victoria, and that was Ballarat Health Services.

Mr Bekhazi: I will give you another example. ACSAG is an aged-care provider that has a number of facilities. If you have a look at their aged-care services workers, community and personal service workers, they had 1,524 on part-time and permanent contracts and eight full-timers. That is just them.

CHAIR: When you say part-time permanent contracts, are they listed as part-time but they are working full-time?

Mr Bekhazi: They can work up to full-time if their employer gives them the hours. Their base contract says it is at least eight hours per fortnight, but you can have more.

CHAIR: Yes, okay. But most people are working full-time and then a reduction is as a disciplinary measure?

Mr Bekhazi: They would like to work full time but they are not on full-time contracts; they are permanent part-time contracts that are equivalent to full-time.

Mr Eden: The point the senator was making was that these people are on eight-hour contracts although essentially they are working full-time hours. And if they rock the boat, guess what? They end up working just the eight hours.

CHAIR: How many were on part-time?

Mr Bekhazi: This is ACSAG. We had 1,524 part-time permanent workers and we had eight full-time permanent workers. This is for their community and personal services workers.

Mr Eden: The spotless stats were pretty interesting.

Mr Bekhazi: We have another contracting company called Spotless Holdings. I will tell you a bit about the company. It employs more than 47,000 people in Australia and New Zealand and it is the parent company to 10 other registered companies that provide contract cleaning, catering, laundry services and more. Their figure is slightly different. I think they are actually even worse than the other figures I gave you because, if you look at their community and personal service workers work status, they have actually got 10,000 of their workers on a casual basis. They have got only 826 on a part-time permanent basis and 860 on a full-time basis. That is a whopping difference, isn't it: 10,000 versus 800 or so?

CHAIR: Do you have any stats on how long those 10,000 casuals have been casuals?

Mr Bekhazi: No. Do you know what? Getting these statistics was extremely difficult in the first place.

CHAIR: Yes, I can imagine.

Mr Bekhazi: I had to go through their financial reports. What really helped me was the gender equity authority, because these companies have to lodge with it and they have to give these details. If you analyse the reports that they provide, you can find the statistics. Unfortunately, because this company are across Australia and New Zealand, they are not required to give you statistics for each worksite or even for each facility. They just give you the overall statistics that they have throughout New Zealand and Australia. It makes it really difficult to map these facilities, so to speak, and they will not assist us either. I have found it difficult to get information about any of these companies.

Mr Eden: Transmission of business is becoming a real problem for us as employers discover, if you like, loopholes in the system. I will give you some real examples. Warrnambool hospital recently awarded a contract to Dorevitch Pathology. Prior to Dorevitch Pathology, the hospital contracted out the in-house service to Healthscope, which is now known as Clinical Labs. Clinical Labs had the contract to provide the service to the hospital for nine years. Our members under that particular agreement are not entitled to long service leave until 10

years. There seems to be a bit of a pattern emerging where a contract is mysteriously lost at nine years so there are no long service leave entitlements. There was a direct transmission of business from Warrnambool hospital to Healthscope at the time, but there has been no transmission of business from Healthscope to Dorevitch Pathology because there is no relationship between the two.

CHAIR: Do they pick up the same employees, or was everyone just terminated?

Mr Eden: They picked up some of their employees but they took out all the equipment that was used by Healthscope, because Healthscope set up another lab in town, and brought in all their own equipment. Therefore the employees did not get a redundancy from Healthscope, because it was argued it was the customary turnover of practice: 'Our contract is over, so there is no redundancy that we have to pay those individuals.' When Dorevitch came in they re-employed these individuals and, for the purposes of long service leave, annual leave and sick leave accruals, they started from scratch again. There was no direct transmission of business because Warrnambool hospital were the company that was contracting out and they did not have any direct employees.

CHAIR: Obviously I am wrong, but I thought the process was that you had a transmission of business, so there was no requirement to pay redundancy but your entitlements transferred with you and, if they did not, redundancy would apply. If you are going to go back, lose your entitlements and start from scratch, you are in fact being made redundant and you take pot luck by reapplying with the new employer. You may get the job or you may not. That is why you have been—

Mr Eden: Thus be the loophole. With Warrnambool hospital, Transfield was directly contracting out to Healthscope at the time, so there was a transmission of business and those individuals went over with their entitlements et cetera. But because Dorevitch took over the contract from Healthscope there are no direct employees from the hospital anymore, so there is no transmission of business and there is no ongoing entitlement. Healthscope re-employed some individuals and the rest had comparable job offers, I suppose. There was no transmission of business and there was no redundancy.

CHAIR: But you mentioned long service leave, for which they were to become eligible at 10 years, and said the contract was nine. How many people are we talking about?

Mr Eden: There were probably a dozen employees, all up, on that particular site.

CHAIR: But even so you would then have to factor in—

Mr Eden: One individual was a single mother who had 9½ years service with Healthscope and did not get one cent.

CHAIR: To rebid for the contract, you would have to factor that into the new cost, which would then make you more expensive, but if it resets and goes back—

Mr Eden: As I said, it seems to be a bit of a pattern, where nine years is when they are starting to throw a high bid in.

CHAIR: I would be interested to see if you can actually identify a pattern. That would certainly be very interesting.

Mr Eden: Peter Mac recently went into the new cancer centre. There was no transmission of business there between the old hospital and the new hospital, because of the way that they set up their new corporate structures. The Bendigo Hospital was built by Spotless, which has a 25-year contract to service that hospital. In 25 years time, if these loopholes are not fixed up, they will potentially walk away from that contractual arrangement and say it is the normal custom for turnover of staff, even though they have been there for 25 years, so therefore they are not going to pay out redundancy.

CHAIR: If you are there for 25 years, the entitlements actually accrue and they would not be able to—

Mr Eden: But from a redundancy point of view—

CHAIR: It does not accrue until the 10-year period, so, if you get rid of people before the 10 years—

Mr Eden: So they will have the long service leave, but what about redundancy after 25 years? They will say it is normal custom and turnover of staff—who have got a 25-year contract.

Here is another example, of employees at the Northern Hospital kitchen. This stretches right back to when it was the Panch. Then it went to the Northern and then they contracted out their kitchen to Spotless, which was a direct transmission of business. Now they have lost their contract, at nine years, to ISS. So there are the same employees that have been employed in that kitchen for 25 years, and there is no redundancy because Spotless, who had the contract, offered them alternative employment in various malls and shopping centres around Melbourne. There is no transmission of business, because Northern Hospital do not have any direct employees

working in the kitchen. It goes with Spotless, who offered them alternative employment. They have refused that alternative employment. There is no redundancy and there is no transmission of business. So there are loopholes there, and it is becoming a bigger and bigger problem for us as more and more employers get onto this.

CHAIR: I think we would be interested in having your thoughts on notice about what could be done to close those loopholes.

Mr Eden: Kamal and I have made a number of submissions both federally and to the state government in relation to a portable long service leave fund, to at least offer some protections for these individuals in relation to their long service leave entitlements. Potentially they could be working forever in pathology within Victoria and never accrue a long service leave entitlement.

Mr Bekhazi: That is right. Recently there was a national portable long service leave inquiry. That did not really go anywhere. However, the Victorian inquiry into portable long service leave is evolving. David and I recently went to Trades Hall and were interviewed by ACIL Allen Consulting. They were basically chosen by the Victorian government to conduct a feasibility study into portable long service leave for Victorian workers, specifically for the cleaning and security contracting areas. There are other stakeholders involved in this, so it looks like, within three years, hopefully, we will have a portable long service leave scheme for the cleaning and security areas. The Victorian government has also committed to conduct—by, I suppose, the middle of this year—a feasibility study into a portable long service leave scheme for social and community services workers similar to the one that is actually operating in the ACT. So there is some hope on the front of portable long service leave—being able to go from employer to employer and from private to private or from public to private and still hold onto your entitlements. We are actively involved in these negotiations and we hope that that could help solve the problem.

Mr Eden: If there is a particularly dodgy area of our coverage, it would be the supported residential services in Victoria. They are governed by a state act, but the vast majority of them are quite difficult to deal with. They quite often will purchase motels, for example, that are not profitable, that are run-down, and then they will convert them into a special accommodation unit, where you will find people living there who are aged, have a disability or quite often have a psychiatric illness and have been institutionalised. With de-institutionalisation of psychiatric care, many of these individuals have been living in psychiatric facilities for a long time and cannot operate independently out in the community, so they find their way into these supported residential services, where they are exploited.

Each provider of an SRS in Victoria sets their own fee schedule. So you can just imagine how much some of these poor buggers have at the end of each week out of their pension. But if there is an area where people are being ripped off and underpaid, it is the SRS.

Mr Bekhazi: Yes, in the SRS area, you have people there with schizophrenia or other psychiatric conditions. You also have people there with disabilities such as autism and various other disabilities—dementia, what have you—or physical abilities. There is an age spectrum. There are people from 18 to 60 in there. What concerns us is that these people have specific needs. I have just mentioned a number of diagnoses and David talked about mental illness. Statistics recently indicated that about 85 per cent of people in aged care actually have a morbid psychiatric condition such as depression or anxiety.

So you can appreciate the complexities of the conditions that the people in these supported residential facilities have, yet who do these SRSs employ to look after them? It is people with certificate IIIs—which is satisfactory! When I was working in the psychiatric services for the area mental health services, you needed at least a bachelor's degree and most likely a postgraduate degree such as a master's degree to actually do this work. I have said that I was disappointed that we did not have as many resources as I would have liked, but these people have absolutely nothing compared to what we had. The difference is I worked for the government and the government is better resourced than these SRSs because they are often run by private organisations—people who are there to make a profit. So they cut corners and they get people in there who do not receive much money.

You can imagine the average worker there would probably be earning between—what? David—between $40,000 and $50,000. If you were to hire a psychologist to work there, you would put another $40,000 to $50,000 on top of that. Just mentioning that, they do not even have consulting rooms for psychologists or medical professionals to visit. To save money, what they do is they take these people to the local community health centres or to hospitals or to emergency departments and use their Medicare card to cut costs. I am just talking about the patients there.

To get back to the issues, I will focus on one particular place called Browen-Lee lodge, which is in Ballarat. Our organiser for the Ballarat region has reported to us that there are some dodgy issues happening there. For

instance, they have one person who works three 16-hour shifts per week and is being given a total of $300 cash in hand. There are no pay slips, there are no super contributions and there are no annual leave or other leave accruals.

Mr Eden: $300 a week equates to $6.48 an hour.

Mr Bekhazi: That is right.

Mr Eden: That would have to be the cheapest employee in Australia—$6.48 an hour.

Mr Bekhazi: What we know of. I would urge the committee to actually go out and have a look at this place and to investigate further to see whether our claims can be substantiated. I think you would find that we are not far off and the owner is actually a millionaire. What we understand is that recently she has had some heat with the media coming in and out. Somehow they have heard about what is going on and all of sudden people have been issued payslips and people are starting to get their super paid. But, if the Senate chose to investigate further, you would find that their superannuation payments have just commenced for workers that have been there for years, perhaps. You would find that the payslips, unless they are backdated, have just started for people that have been there for a long time. This is something that has really concerned us and our organiser, who seems helpless, really; she cannot do much. She said that this particular provider—should we name her, David?

CHAIR: I think you have already.

Mr Bekhazi: We have named the lodge, yes, but we have not named the person. She is known to have done this in the past and, when the heat comes or when the media or certain government organisations start to look into it, she closes it down and moves on, only to reopen a year later in another area.

CHAIR: That is something that concerns us, but you might leave the details with the secretariat later. The committee may consider writing to the ombudsman about that specific case.

Senator McKENZIE: Has the union approached the ombudsman with these cases? You have a lot of employees who are, from all accounts, subject to illegal work practices. What contact have you had with the Fair Work Ombudsman on their behalf?

Mr Eden: We are still investigating just how widespread this is. We believe that she actually owns two other facilities as well, one of which we cannot even find, in Melbourne, so are still trying to track that down. Once—

Senator McKENZIE: But it is not just this particular incident. It sounds like there are a swathe of issues across the industry. I would like to know what your union has done in terms of contacting the Fair Work Ombudsman on behalf of your members.

Mr Eden: As I said, we have managed to recoup $6 million worth of unpaid entitlements to our members in the last four years and we are going to continue to work diligently to keep those outstanding entitlements for our members. These individuals who work at the SRS, as you can imagine, do not have a lot of money to spend and therefore have not been members of our union for very long—in fact, just a number of weeks—so we are still investigating. I have had histories with SRSs in Victoria in the past. I know there is still another one in operation out at Learmonth where individuals would tell me that, out of their own pocket, they would be buying food for the clients there, because they were not getting fed enough, and in winter, when it is freezing cold out at Learmonth, the heaters would be closed down overnight. They would be taking blankets off their own beds just to keep the clients warm. Even then, they were getting paid cash in hand. So it is a really tough area.

Senator McKENZIE: I agree, Mr Eden, and I accept all of your evidence on face value, but you still have not answered my question, with respect.

Mr Eden: Certainly.

Senator McKENZIE: How often do you ring the Fair Work Ombudsman and put these very serious cases to them for them to investigate?

Mr Eden: We certainly would not want to launch into the Fair Work Ombudsman without as much evidence as we could gather.

Senator McKENZIE: Yes, so my question is—

Mr Eden: I would say we are still going to be working on this for another few weeks. What have we taken in the past—is that what you are saying?

Senator McKENZIE: So you have not contacted the Fair Work Ombudsman on behalf of your members at any time?

Mr Bekhazi: I think we might have to speak to our industrial department in relation—

Senator McKENZIE: Could you take that on notice. I would be really interested, because these are serious allegations. We have a process and I would be really keen to know that the union was backing their members and ensuring that went to the Fair Work Ombudsman.

Mr Bekhazi: There was one case before we came here that we were thinking of bringing here. This particular lady was told to start working in the kitchen and she could not because she had some lower back issues, and she was basically allowed to work just as a cleaner and that was fine for her, and then, all of a sudden, her employer said, 'You are doing the kitchen today,' and she was not able to do it and he stood her off without pay. Then our organiser basically went in there and negotiated with him. Normally what happens is that we wrangle with them, and this could go on for months. And we do end up at the Fair Work Commission. We do not necessarily go straight to the Ombudsman; we go to the Fair Work Commission. We try to negotiate with the employer. Our organisers try to solve these things as cheaply as possible and as quickly as possible.

We were going to bring this particular case here today, but our organisers told this person—this employer, the HR manager—that we are coming to a Senate inquiry and that we are going to mention this case, and within a week the entire matter was sorted and he basically allowed this worker to redraw her contract and just leave it as cleaning only. The worker was happy. She was back paid from the time she was stood down. So, our organisers usually kind of solve these matters before they get to the Ombudsman.

CHAIR: Sure.

Senator McKENZIE: But it sounds like it can be months in the meantime.

CHAIR: And those issues are about bad management practices and those sorts of relationships, not necessarily the corporate avoidance issue, which really comes back to that question. If people are being paid cash, not being paid overtime—those are the issues. So, perhaps you could take that on notice.

Senator McKENZIE: Yes, because it just sounds like that avenue is not actually being pursued on the part of your membership. You cannot say, 'Okay: of the 20 cases we did this with this many and we referred seven to the Fair Work Ombudsman.'

CHAIR: Yes. So, you are going to take that on notice. And there is one other issue that interests me, which we have not yet got to, which is visas.

Mr Bekhazi: With the visa issue, we will focus on one aged care provider, Opal Aged Care. I am not sure whether you have heard of them. They have facilities in Gippsland, Inverloch, Sale, Warrnambool, Bairnsdale and Lakes Entrance. They have about 570 staff. They are owned by a company called DAC Finance Pty Ltd, which is probably, again, owned by a company called Japara Healthcare, which is registered in Malaysia. It is a multinational company. What our organiser on the ground is telling us—or multiple organisers, because they go through a number of areas that our organisers cover—is that we have multiple employees who are on part-time contracts.

I can give you the stats for DAC Finance Pty Ltd. However, these stats do not pertain just to Opal Aged Care; they also pertain to another company that they own, Compass Aged Care. There are 4,514 permanent part-time workers and 195 full-time workers. Again, we are seeing this trend of underemployment, and it is not due to the choices of our members. But I will go on to the visas.

Our members are telling us that they are not getting enough hours, and they ask for hours. When a position comes up or when there are hours available, the company tells them. They advertise internally, and they tell them to apply. They apply. And they tell them, 'You weren't successful in the interview.' Then they apply externally, and then a number of members in the community apply, and they tell them that they were not successful. Then they use the 187 regional employer sponsored visa. What we are seeing—and we have about 50 members who have told us this—is people coming in from the subcontinent, particularly from Sri Lanka and India, coming into these facilities and basically and taking the hours that they would have loved to have.

CHAIR: Are these people already here? Or are they actually coming from the subcontinent to fill these vacancies?

Mr Bekhazi: They are coming from the subcontinent to fill these vacancies. So, what the employer will do, once they have satisfied the two- to four-week external advertisement and they do not have any successful applicants, is to make another advertisement that welcomes people from overseas to come in under a sponsored 187 visa. They get lots of applications, because our wages here in this country are a lot better than on the subcontinent, where I am not sure whether they have a minimum wage.

Mr Eden: So the employers are simply just ticking the boxes: 'Yes, we've advertised it internally; yes, we've advertised it regionally'—

CHAIR: Sure, and that is what I am interested in, because I know the previous government tightened some of those advertising rules, and I think this government has actually tightened up those things again. So, I did not think you could just simply tick that box. I thought you had to actually justify why someone who applied was not employed. But I could be wrong about that. What is your understanding? Is it that you still simply need to say, 'Yes, I've advertised'?

Mr Bekhazi: They could say that they did not interview well, they were not suitable, they did not have the right qualifications, in a regional area there are not enough applicants—

CHAIR: This is the example you gave us about this 4,514 part-time staff, and 195 full-time, and none of the 4,514 are qualified.

Mr Bekhazi: That is across their entire services. I was not able to get specific stats for, let's say, Bairnsdale or Sale.

CHAIR: How many of these 187 visa people do you say are being brought in unnecessarily? Are we talking about a handful? Are we talking about hundreds, or thousands?

Mr Eden: Opal seems to be one of the companies that exploit the visa scheme the most. It is really hard to get any information out of the visa workers themselves, but the staff who have missed out on hours within these facilities have alluded to us, because they live locally, that the 187 regional sponsored visa holders are actually living in homes that are owned by the company itself, and they are paying rent back to the company. We are not sure what amount of rent they are paying back to the company.

Senator McKENZIE: It also might depend on the conditions of the visas. For some of the seasonal worker programs—for instance, Pacific Islanders picking in the North—providing accommodation is part of the visa requirement.

Mr Bekhazi: If you want specific figures, I think one of our organisers told me that the members said that there are probably about 50 overseas workers across three facilities.

CHAIR: Yes, we would be interested, on notice, if you were able to actually drill down on some of those stats. These are the issues we would like to then challenge others about and test. Even if they are anecdotal—

Mr Bekhazi: They would have to come from our members, yes.

CHAIR: That is right. I think we do want to challenge the veracity of some of that. Sometimes these things just develop and become myths.

Mr Eden: It is hard for us to work out what type of visa scheme they are under, as well. Ballarat Health Services here in Ballarat, the Geoffrey Cutter Centre, is another workplace that is rife with bullying and harassment. The manager there, Jacqui King, has indicated to the staff that no-one here is going to work full-time and get an ADO. Meanwhile, there appear to be more and more visa holders working within their organisation.

CHAIR: That is very specific, and, again, we would be interested if you could detail, on notice, the specifics of those claims. That is something we can then challenge.

Mr Bekhazi: I think what you are saying—it does make sense, doesn't it, because if you look at the unemployment rate in Bendigo in the age group of 15 to 24, it is 16 per cent. If you look at the age group of 45 to54 it is 18 per cent. You would think there were enough local people there to kind of take up the jobs, let alone the staff who want more hours. Yet we are seeing these people coming in from overseas.

Senator McKENZIE: Very simplistic: X percentage unemployed in this regional area. That is a very simplistic way to break down our regional job market, I think. For instance, when the mining boom was on, one of the committees I was on went to regional WA, and they had to bring in visa workers in the aged care facilities because everybody who could read and write, basically, in WA was working in the mining industry. That was a very real shortage for those regional areas that had to provide care for our aged population.

Mr Bekhazi: I think I did read about that, yes.

CHAIR: This is why we would like those examples, so we can challenge them, because, as I said, some of these things just become myths. And if they are, they are. But if they are not, we would like to know.

Mr Bekhazi: Absolutely.

Mr Eden: I know that the organiser for Ballarat, who unfortunately is absent today, has written to Ballarat Health Services on numerous occasions to try to find that exact information you are after.

Mr Bekhazi: That is the place you are going to get it from.

CHAIR: Well, we can also write. Sometimes we need to know the detail of the information we are after, too.

Mr Bekhazi: We will do our best to give you the information that we can get, and if there is information that we know you can get from the employer but that they are not giving to us, we will let you know, and hopefully you can get that from the employer—

CHAIR: Well, not necessarily from the employer, but there is a whole department at our disposal.

Mr Bekhazi: because that seems the only way you are going to get that kind of information.

CHAIR: If there is nothing else on visas, then, thank you for your presentation to the committee today. It has been a very informative discussion, and very valuable.

Proceedings suspended from 13:00 to 13:46

COATES, Ms Hayley, Deputy Chair, Commerce Ballarat

GILLETT, Mrs Jodie, Chief Executive Officer, Commerce Ballarat

CHAIR: We now welcome representatives from Commerce Ballarat. I understand information on parliamentary privilege and the giving of evidence to a committee has already been provided to you. I now invite you to make some opening remarks to the committee, to be followed by questions.

Mrs Gillett: We had discussions prior to this around what we could offer. Commerce Ballarat is the largest business support group in the city of Ballarat, representing 500 businesses. We offer a wide range of support to those services. We obviously get involved in some advocacy, but predominantly it is around promotion, support, training and development, networking—those kinds of opportunities. We have businesses from every sector, across the board. I suppose that is us, in a nutshell. Getting into what businesses do, as I commented at the time, most businesses that are supporting a community or a business organisation or being part of a business organisation are generally fairly comfortable putting themselves out there.

CHAIR: Thank you. Ms Coates?

Ms Coates: I have nothing to add.

CHAIR: Do employers come to you for employment advice?

Mrs Gillett: No.

CHAIR: They do not. I am wondering what you might think of the proposition that, prior to an employer employing an employee, they would be required not just to provide the basic National Employment Standards in writing but to set out what your wages are, what your terms of employment are, what the award is and how that is found. So not only does the employer have a very clear understanding of what they are expected to pay, because then they could easily check whether or not that is the right payment, but the employees would also know what the expectation was for payment. Do you think that would be a reasonable obligation on employers?

Ms Coates: I think that would be the highest level that you would expect from employers. Not all small businesses are going to be able to put everything in writing with all of their staff every single time. There are going to be instances where employers need to hire someone quickly before they have got the paperwork all in order, and so employees might commence work before they have been provided that information. I would hate to think that employers would be penalised in that instance if they were slower at getting their paperwork organised or that kind of thing.

CHAIR: Sure. Maybe within a couple of days of employment. I understand that if you want someone right now, but the employer would have to understand what they are going to be paying the employee and the terms and conditions that they are obliged to pay, even if they are the legal minimum, at the point of employment. If it were not immediate but within a couple of days that you had it in writing, would you think that would be reasonable?

Ms Coates: It would be reasonable, yes.

Mrs Gillett: This is probably speaking from Commerce Ballarat and employing staff, and in no way when I say this does this mean that I am saying it is why some businesses have done the wrong thing. If a business does not pay accordingly, that is wrong, and there is no way around that. But, when you are actually looking to employ someone, it can be quite difficult if you are going into the opportunities that are there now, sourcing through the website, there are a lot of processes and a lot of 'I'm not sure that is quite right.' There is not a lot of grey; it is very much black and white. Within our changing workplace—and I know my staff do such a broad range of skills—they do not actually fit. They are not an accounting administration person or this other kind of administration person. So it is actually quite difficult sometimes to make sure.

Ms Coates: We cannot always pigeonhole staff into the specific descriptions that are provided for with wages and that kind of thing.

Mrs Gillett: I think the workplace is changing to quickly and maybe the way we categorise somebody's job is not changing as quickly.

CHAIR: How would you know what to pay someone then?

Ms Coates: This is what we are saying. It can be quite difficult to ensure that you are paying someone the correct wages if you are not sure what category they actually fit under. Again, as Jodie said, we are not excusing people for underpayment, but in some instances you may think that an employee is an administration assistant when they are really more of an executive type, doing more work than what an administration assistant should be

getting. But you think that is probably the best category, and then they end up being underpaid because they are not being paid at the higher-level work that they are actually doing.

CHAIR: Sure. I accept that if people are not sure, but at what point do you make the decision to be sure? Otherwise, people are just guessing what people should be paid, and that becomes a problem. If your best guess is this and it is put in writing, it is fairly easy to test what is in writing for the employee, for the employer, for the workplace ombudsman or for anyone else to come say, 'That's wrong; we understand how you came to that conclusion, but you need to fix it.' The employee may be able to get further advice as well.

The second element is that that is what you are supposed to be paid, but then maybe they are not being paid that in the first instance. So it is a double test. One is that, yes, this is right according to the national employment standards, the appropriate award or whatever. That is what we think is there. But then it is also an easy check to say that that is what people should get paid and the employee can check against that to make sure they get paid. If they are in a role where penalty rates apply on Saturday at this rate and on Sunday at that rate then they clearly understand that that is what they should be getting paid, and it is not a flat rate.

Mrs Gillett: And that is quite clear. We are probably talking about—

CHAIR: But I do not think that does happen, does it? This is just evidence I have got from talking to young workers in particular who had no idea they were actually entitled to penalty rates and had never been paid penalty rates. They just got a flat rate, whatever it was, all the time.

Mrs Gillett: I cannot speak for the young workers. I am sure that does happen. I am saying an employer should be quite clear as to what, depending on your industry, the rates should be on any given day. I think what we are referring to is probably a little bit different. In years gone past, if an employer wanted to check a wage, they picked up the phone and could actually speak to someone, whether it be VCCI or whether it be Wageline. Everything has moved online, and it can be quite difficult in the changing workplace to actually pigeonhole where your staff belong.

CHAIR: So you would think that it is important to have someone at the end of the day. If it is not easily identifiable through an online process, there needs to be someone on the phone you can actually talk to and get formal advice from?

Ms Coates: Definitely.

Mrs Gillett: I think that would be of enormous help to many employers.

CHAIR: All right. I was actually under the impression that that is there, but we will certainly check.

Mrs Gillett: If you are a member of VCCI—the Victorian Chamber of Commerce and Industry—or the Australian Industry Group, there are certain peak bodies that offer that information to their particular employers, but for the average business—

CHAIR: I thought the workplace ombudsman was providing that.

Senator McKENZIE: I thought the small business hotline did.

Mrs Gillett: It is something about which we get told quite often that it is difficult to do.

CHAIR: And, if it is there, maybe it needs to be advertised—maybe have an information session. Has the workplace ombudsman engaged with your organisation at all? Maybe not if you are not actually an employment advice organisation.

Mrs Gillett: Are we talking national?

CHAIR: Yes, the workplace ombudsman. They do not come and do seminars for your members?

Mrs Gillett: No.

CHAIR: All right. The committee has received two things. The workplace ombudsman doing random checks over many years suggests that around 57 per cent of businesses in regional areas do not comply with their legal obligations under the Fair Work Act. That might be one minor breach at one level or a massive breach at another, but I just put in context that it is more than half that actually are not complying with the full scope of legal requirements. We have heard a fair bit of evidence that it seems some employers deliberately do not comply. Accountants and others actually provide resources to enable them to avoid their obligations under the Fair Work Act. Effectively, people are not on the books or people are being paid cash. Are you aware if that actually happens in Ballarat?

Ms Coates: I am not aware of anyone providing advice on how to avoid the Fair Work Act. That is news to me. I am sure that there are businesses out there who are deliberately attempting to avoid their obligations just like there are people within society who are attempting to avoid the law in all sorts of areas, but I would be very

surprised if it was 57 per cent of businesses who are intentionally avoiding their obligations. What that number says to me is that the laws as they stand are either not advertised appropriately or are too confusing for businesses to understand and comply with.

CHAIR: Yes, that brings us back to my first question, in which Ms Gillett said employers should know what they are going to pay. I think it is not really a hard ask for an employer to know what they are going to pay someone if not in the very first hour but at some point after that. If they are not clear about that, what do they pay? They should not simply be making it up.

Ms Coates: That is right. They should know what the minimum standard wage is to ensure that they are paying at least that.

CHAIR: But how can it ever be unintentional? You either know what you have got to pay or you do not.

Ms Coates: Yes, but the issue is that there are minimum wages under different awards for different industries for different levels of jobs, and that is where the confusion lies. You can pay the minimum wage, and everyone can be paid the minimum wage, but that is not the minimum wage for particular jobs.

CHAIR: What would you say of that one employer who has been picked up by the workplace ombudsman, had to make redress for the wages and explain to them what wages they should have been paying but continued to underpay?

Again, we seem to have quite a bit of evidence that it is a business model that continually underpays, knowing that at the end of the day you will not have to pay back the full amount of underpayment and it is probably worth it. There seems to be no penalty for multiple offences. Of course, if you do not know, then it is clearly unintentional. I am asking several questions at once. Do you think there is enough disincentive to knowingly underpay workers in the system?

Ms Coates: I am actually not aware of what the disincentives are and what types of penalties are available for businesses that breach, so I cannot comment as to whether it is sufficient disincentive or not. But I would have thought that the risk of going through that would be sufficient to stop a business from continuing that and I would not condone any businesses that continue to breach the law after they have been told that they are doing the wrong thing.

CHAIR: You have thrown me a little bit because, when I read 'Commerce Ballarat', I was expecting old, white, cigar-smoking men sitting in leather chesterfields in a walnut panelled room.

Senator McKENZIE: You're thinking of Collins Street, I think, not Ballarat!

CHAIR: And now we have exactly the opposite.

Mrs Gillett: We had those. We have retired them!

CHAIR: I was expecting all these conspiracies to be happening in those cigar smoke filled rooms.

Ms Coates: No. We have cut through those.

CHAIR: Or maybe you are just not invited.

Mrs Gillett: I often say that, when I started in this job, my first networking event was a roomful of men in suits, and that has changed dramatically over the last seven years.

CHAIR: I am very glad about it too, I have to say. I just have to collect my train of thought. I threw myself off by admitting my own value judgements.

Mrs Gillett: When you were talking about the 57 per cent, is it that 57 per cent of businesses do not pay accordingly or 57 per cent do not comply completely with every piece of paperwork that they are supposed to?

CHAIR: That is what I wanted to be at pains to set out. According to the workplace ombudsman, their evidence would show that in regional areas 57 per cent of companies do not comply, but we do not know the difference—whether that is one minor thing at one level or the full noncompliance.

Senator McKENZIE: To be clear on the 57 per cent: my understanding of that particular figure is it is 57 per cent of businesses that the Fair Work Ombudsman has investigated. There is a threshold there. You have to be somebody that is exhibiting dodgy practices to even be investigated.

CHAIR: Some of them are also random.

Senator McKENZIE: Some of them are random, but we are getting the details on that. I would hate for the public commentary out of our inquiry here—

Member of the audience interjecting—

CHAIR: Maybe you should just sit down.

Senator McKENZIE: I would hate the public commentary out of this inquiry, when we are actually in the regions, to say that 50 per cent of country businesses are ripping off their employees, because that is actually not the case.

Mrs Gillett: No. We would not like that to be the case either. Our business community is really important to the city.

CHAIR: Can I just say, before we go on, that this is a public hearing and we very much welcome members of the public to come and listen to what we are doing, but the participants in this inquiry are the people at the table giving evidence to the committee and the committee members. If you are going to try to contribute again, I will ask you to leave.

Member of the audience interjecting—

CHAIR: If you ask another question or interrupt the proceedings of the committee, I will ask you to leave.

Senator McKENZIE: My question was around the level of information that businesses have and indeed workers have. We heard some earlier evidence from trade unions this morning about ensuring young people are appropriately educated, before they enter the workforce, as to their rights and obligations when entering the workforce. Similarly, it would seem that there is a dearth of information, or a varied level of information, being accessed. I am a bit like Senator Marshall—I assumed we had a small business hotline; I assumed that all that information was getting on the ground. Can you outline for the community what level of professional development, if you like, your members receive around their obligations under the Fair Work Act? Does the local council or VCCI run things?

Mrs Gillett: One of the issues in recent times is that some of the peak national bodies have removed people from the regions. The Victorian chamber have not had a representative here for two years. The Australian Industry Group in the last two years, instead of having someone based in Ballarat, have someone based in Bendigo who oversees Ballarat and beyond.

Senator McKENZIE: And the west?

Mrs Gillett: Right through to the border pretty much. That is probably creating some lack of information, if you like. The national bodies are becoming more metropolitan focused and less regional focused, which I am sure creates an issue. We do a lot of development work. We will partner with other groups who want to present information such as that. In the morning we have session with City of Ballarat and Regional Development Victoria to talk about the opportunities for business funding that is available, training that is available and those kinds of things.

Senator McKENZIE: But specifically to do with industrial relations issues?

Mrs Gillett: No.

Senator McKENZIE: So the peak industry bodies are not doing it and the local councils are not providing that information. What about the economic development managers?

Mrs Gillett: Our local council economic development unit is more about bringing business to Ballarat and that kind of thing. They do not do a lot of training development, so, no, it would not be council. During Small Business Month in August—

Senator McKENZIE: The university?

Mrs Gillett: No, not that I am aware of.

Senator McKENZIE: It is very difficult for small businesses in particular. They do not have an HR manager on site. It is very difficult—

Ms Coates: It is very difficult to access that kind of information, other than what you can find readily available on the internet, which gives you a general overview. You can try to drill down information on the internet, but most small business owners do not have the time to read through the whole act or to even get through all of the information that is on the website for them.

Mrs Gillett: During Small Business Month, which is in August, there are some opportunities available and we have a session booked in to do in August. It is minimal from my understanding.

Senator McKENZIE: What about young people? Do you know of any programs in local schools?

Mrs Gillett: I am not familiar. There is Highlands LLEN. There are a couple of areas that may talk to youth, but I am not familiar. We as an organisation have been trying over the last few years, and it is getting some legs, if you like, to forge some relationships between our organisation and business and schools. We believe it is

important. It is certainly an issue that young people need to know if they are not being supported or aided through home to understand where they can go or what their rights are. I agree.

CHAIR: If you received a complaint from an employee about one of your members, would you deal with that?

Ms Coates: No. We would refer that.

Senator McKENZIE: Who would you refer to? The Fair Work Ombudsman or the Fair Work Commission? Who would you typically—

Mrs Gillett: The Fair Work Ombudsman. It is not something that has ever happened. We have never had a complaint come to us from anyone. As I said, we are a different organisation to maybe what was understood. We do not get involved in that side of the business. That is more for the Victorian chamber or those peak bodies. We have never had a complaint, but if we did it would be the Fair Work Ombudsman.

CHAIR: For some of these questions you may not be aware, so that is all right. I had a bit of a misunderstanding of what you actually do as Commerce Ballarat.

Mrs Gillett: We did make a couple of calls to explain.

CHAIR: I am glad you came, because you have put a few things in context for us. I am wondering what you know about the old AWA system—Australian workplace agreements. I understand that at the time when AWAs were in place, in force, there was a bit of a push in the Ballarat region to get quite a few up and running, and it would appear from the evidence we have that a lot would have expired. They are still alive because they exist until they are replaced, but they would have all notionally expired no later than 2012. Some of them are legally in force. Do you know if your members are aware of those agreements still around?

Mrs Gillett: I am not aware.

Ms Coates: No, I would not be aware of any of our members who are operating under that system or if there still are any.

CHAIR: Mrs Gillett, you said earlier that all employers would know that there is a penalty regime on weekends. Would all employers know that they cannot make cash-in-hand payments to their employees?

Mrs Gillett: Yes.

CHAIR: Thank you for coming. If you think that we have missed something and you have thought when you leave the room, feel free to contact the committee and put in a further submission or, if you think we have misunderstood anything, please feel free to write to us and put us straight. Thanks very much for your appearance before the committee today.

Mrs Gillett: Thank you.

Ms Coates: Thank you.

Proceedings suspended from 14:11 to 14:19

LUDBROOK, Mr Glen, Principal Solicitor, Central Highlands Community Legal Centre

CHAIR: We will now recommence. Welcome, Mr Ludbrook. I understand you have received information on parliamentary privilege and the giving of evidence to a committee. I invite you to make some opening and general or specific remarks, and then we will follow up with some questions.

Mr Ludbrook: I have been at the centre for 4½ years, but I have actually had 49 years experience as a lawyer. The first 45 years were in private practice. I practised for 30 years in Ballarat, and then had five years as a locum in Geelong and Melbourne and then 10 years in Korumburra, which is in Gippsland. At the centre, most of our work involves people who have been underpaid or paid cash in hand—those sorts of problems. Occasionally, a person has been wrongfully dismissed. We do not have a big enough service to provide a comprehensive advice service, let alone appearance. Job Watch is the only other community legal centre in Victoria that provides specific advice, but we get lots of referrals both from the commission itself and from places like Job Watch because we are a general centre.

CHAIR: Sorry—you get referrals from the commission?

Mr Ludbrook: We get referrals from people who ring the ombudsman's office. They get referred on to us.

CHAIR: You might also explain to us how that works. Do they fund you?

Mr Ludbrook: We ask people how they have come to find out about our services, and people who have been ringing the commission or the ombudsman's office tell us they have been directed to us.

CHAIR: What is the size of your organisation?

Mr Ludbrook: We have four lawyers—me and three others. Today I have two in family violence courts and the other one is on leave. Two-thirds of our work would involve family violence or family law; the other third is a mixture of literally all sorts of things. But, because of the lack of free services for people who have problems with work, they get referred on to us from all sorts of sources.

CHAIR: And that is all right, but I am particularly concerned that the Fair Work Commission or the workplace ombudsman would simply refer someone to you.

Mr Ludbrook: I do not know why or how, but regularly we get referrals.

CHAIR: We will ask why and how that happens.

Mr Ludbrook: I suppose when people ring and they want lawyers and basically do not have any money, they say, 'If you live in the western district, there's only one service that will help you.' Most community legal services do not touch anything relating to employment law because they are flat out with other areas of law, but most of my experience comes from private practice rather than the centre.

I have seen quite a lot of problems involving people who should be employed but finish up working for a hire company. There was one about seven years ago that I can recall, where this chap was dismissed by the company he was sent to. We lodged an application—it must have been before Fair Work—and I was fortunate enough to be able to get a Queen's Counsel pro bono and it eventually got settled. But he was simply directed to go to the company every day, wear the uniform, clock on and clock off, exactly the same as if he was an employee, when in fact he was told by the hiring company that he had to pay his own tax and all those sorts of things. So it was clearly intended—and this was a very large organisation—to avoid the worker's entitlements that they went through this hire company. This company hires hundreds of people. I do not know whether they do that on every occasion, but clearly the hire company was being used to supply the labour of people who were really employees. But I suppose it is quite legal.

For years Australia Post has been insisting that their contractors become a company before they will let them have a mail run. Again, that is clearly designed so they will not be treated as employees. In Ballarat there have been lots of examples over the years while I have practised here of organisations setting up—for example, I can recall a building company would not take people on unless they had two carpenters take out a business name, and they could only go into work during the hours the factory was open and obey all the usual commands. Clearly these types of things are designed to make sure the employer does not pay things like long service leave, holiday pay, sick pay and so forth. It has probably not been as rampant in Ballarat as in other parts, but the real problem in Ballarat is people being underpaid.

CHAIR: Just before we go there, why do you say it is not as rampant in Ballarat as in other parts?

Mr Ludbrook: Probably because we do not have the big companies we used to have in Ballarat. You have wonderful companies like McCain, who pay all their employees above award, and everybody wants to go and work for them. But Ballarat's number of big organisations has been steadily dropping since the seventies, so all the woollen mills and car manufacturing places have closed down one by one. The case I was talking about before is a very large organisation based in Melbourne that operates Australia-wide. It seems that the larger the organisation the more they try to set up these hire companies and so forth.

CHAIR: Sorry to interrupt you.

Mr Ludbrook: The ones I have come across in Ballarat have not been through hire companies. Because I was not in Ballarat for about 15 years, I have not seen the local trends, and now I am not in private practice the people that used to come to me do not come to me anymore. The area we deal in is fairly limited, because the people that come to us are usually those people who have been underpaid, bullied or wrongfully dismissed.

CHAIR: How many do you get?

Mr Ludbrook: As the principal lawyer, I have to go through everybody else's files, and some weeks we might have four or five and other weeks we would only have one. We see 2,000 people a year. So it is a small portion of the work we do.

CHAIR: The percentage of the 2,000—

Mr Ludbrook: Would be very small.

CHAIR: Do you file them under employment type issues?

Mr Ludbrook: Every file we make we have to put under a particular heading. All our employment ones are, say, bullying or wanting to know their rights as an employee or wrongful dismissal.

CHAIR: I know community legal centres are strapped for cash, and I would not ask you to do anything that was going to mean an excessive workload.

Mr Ludbrook: We could certainly supply those figures to you.

CHAIR: Thank you—I should have just been up-front and asked and not felt bad about it.

Mr Ludbrook: I was at a conference couple of years ago and there was a young woman speaking who was working for an organisation in Perth that apparently had been set up through Fair Work to assist people who did not have any money; in fact, I think it had an income test of under $50,000. When an application is lodged at Fair Work the people get referred to that centre, and they have had an enormous amount of success—so much so I understood that Fair Work was going to look into doing that Australia-wide. I have not heard any more about it. I forget how many lawyers they might have employed—six or eight or something—and they had an enormous track record of cutting down the length of hearings, getting some people to withdraw altogether. The only organisation in Victoria, as a community legal centre, is JobWatch, and they are really run off their feet. They just cannot handle the volume of work they have.

CHAIR: Do you get involved in mediation or conciliation?

Mr Ludbrook: In private practice I was always doing mediation. We simply do not have the resources to get involved. We tell them how it works, and now it is all done by phone anyway. We simply tell them that they do not have to reach an agreement; if they can, all the better. The problem is that my experience is more in unfair dismissal, so when I had been working you would explain to people that if they wanted to go on to have a full hearing it would cost about $5,000, and basically they would expect to get about $5,000. So it is a complete waste of time. So the only people that pushed on were those that were backed by the unions. When I was dealing with large organisations in Geelong, like Ford, for example, they just flatly refused to negotiate because they knew that the worker would not take the next step to a full hearing because if they want a lawyer then basically they are going to pay the lawyer as much as they are going to get from it.

CHAIR: Some of the evidence put to the committee so far actually indicates that that very process is often a business model which some unscrupulous employers apply—that, unless they are union members where the union may spend the money to take it to the last hurdle—

Mr Ludbrook: They just say, 'Get lost.'

CHAIR: they effectively say: we know that maybe two out of 10 people will make a complaint; one out of those people may then take it to this level. If we owe $20,000, we will make a $5,000 offer, and everyone will accept that because who does not do that, and the cost of doing that is far cheaper still than paying the right wages.

Mr Ludbrook: I did a lot of conciliations. Very occasionally I appeared for an employer. But the real issue is: what is it going to cost the employer in legal costs? So you usually try to do a deal that saves them money because paying out the worker—and what really used to annoy me is that the workers that should have been sacked and deserved to be sacked got just as much money, if not more, than those people who really should have got a decent sum, because in the negotiations it is a question of what you can settle for.

CHAIR: Leaving unfair dismissal and the merits of that to one side, this is more about the actual direct underpayment. Have you heard or seen any evidence that an employer will continually underpay, even though they will get caught on the odd occasion, on the basis that they are still in front?

Mr Ludbrook: I think that happens; I have not got any solid evidence to back it up. But we seem to have reasonably small operators in Ballarat that continually just breach every rule in the book. Now, how far the workers go in pursuing their rights I do not know, because I would say our advice is fairly limited. We often draft some form of summons, and it depends where they want the thing to be heard, in which jurisdiction—it goes to all those sorts of questions. But, apart from drafting documents that people take to the next step, we do not get involved any further in the process.

CHAIR: How many breaches do you think an employer should be able to make before their employment arrangements are scrutinised?

Mr Ludbrook: I would not even give them three strikes; two would be enough for me, but then I am fairly biased. It just always has upset me that people who frequently breach—separations, for example. Centrelink says to the worker, 'Where is your separation certificate?' and they do not have one, and they say, 'Go back to your boss and get one.' Then the boss refuses to give them one, yet the people that control the separation certificate are Centrelink! I would have thought Centrelink would get onto the boss and say, 'You're going to get fined unless

you provide it', but they do not. They send the worker back, who often goes around in circles. That has been a problem for years.

CHAIR: Yes, and the employer may even deny that they are an employee at that point of time, or ever was, depending on the circumstances.

Mr Ludbrook: Most of these are not denials, they are just—

CHAIR: Do you think it is reasonable that at the point of employment the employer should know the terms and conditions they intend to pay the employee and that the employee should know the terms and conditions that the employer intends to pay them?

Mr Ludbrook: It would be nice if there was a standard contract like the Residential Tenancies Act where people could not go changing all the terms. But we all know that, basically, if a person wants a job, they are quite vulnerable, and so if they do not sign up to the terms they have been offered then they do not get the job.

CHAIR: But I suspect most of the avoidance happens around award based employees, or—

Mr Ludbrook: And often the employers are not well aware of what they should be paying. That is a problem as well.

CHAIR: This brings me to something that really puzzles me. If I am an employer and going to employ someone, I should actually know what it is I am going to pay them and the terms and conditions of employment, otherwise I am simply making it up.

Mr Ludbrook: It is not that simple. As a lawyer employing people, you go through the award, so you have all these things that the receptionist does; if she is a typist she gets paid a higher award et cetera. Some people tend not to be all that interested in awards. They will pay what they have to until somebody makes a complaint. Again, there are some firms—it is not deliberate; it is probably just laziness—that do not want to get involved.

CHAIR: Yes, but again, if you were able to say to someone, 'I'm going to employ you, and you're going to be employed under this award; this is going to be your rate and, when you work weekends, these are going to be your penalties'—

Mr Ludbrook: That is what should happen, but basically it does not. People, time and time again, do not know under what award they are and what they should pay. I simply tell them, 'Ring Fair Work, and they'll tell you what the correct rate is,' and time and time again they find the employer has underpaid them. I had a chap ring me up on Sunday night. He is a security officer, and his complaint is that he has one job where he pays tax et cetera and a second job where the employer will not give him any tax things to fill in and just says, 'I'll pay the money into your bank.' What he wants to know is: is that all legal? I said, 'No, you really need to find out whether you are an employee, and if you are an employee you have to fill in all the tax stuff and they should deduct your tax.' There are some industries where there is a blatant disregard. In Ballarat, hospitality has always been the area for the last 50 years, and there are security people. They just come in waves from different industries.

CHAIR: I just want to come back to people being clear with the employment relationship. Even if you are employing someone after school, in a fish and chip shop or whatever, you ought to be in a position to be able to say, 'This is what I am legally required to pay you, and these are your legal terms and conditions.' That then can be cross-checked as to whether it is right or wrong, and sometimes it might be wrong; they may have got the wrong award or they may be doing something else. But at least that can then be cross-checked by somebody—dare I say it, even the employee. The employee then knows, even though that might have been wrong, at least what they are supposed to get and can then check against their payslip to ensure that they are actually getting that. There is also some proof that they are in fact an employee and not just a figment of someone's imagination that gets an envelope full of cash each week.

Mr Ludbrook: We cannot really give a definitive answer, because the people we see are usually the ones that have not been treated properly, so that is a fairly small percentage. It might be that most employers in Ballarat are doing exactly the right thing and everyone knows where they stand, and we get to see the ones where it is not happening.

Senator McKENZIE: My question goes to where the employee and employer come to an arrangement whereby I do not have to pay tax and you get that tax in your pocket.

Mr Ludbrook: It suits both parties.

Senator McKENZIE: It suits both parties. Do you want to explain, for the sake of our listeners and *Hansard*, what you and I are both nodding about?

Mr Ludbrook: It happens quite regularly in a place like Ballarat, and when I was in Korumburra it usually happened with milkers. The employer wants to employ somebody for a very low wage. The employee might be

receiving some form of pension, so they want a bit of cash in hand. So everybody is happy with the little arrangement until something goes wrong. So there is a blatant misuse of Commonwealth funds being paid to people who are employed and are being paid cash in hand, next to nothing, and it gets back to that problem of people double-dipping. So that is why they are happy to work for next to nothing.

Many years ago I had a classic example that arose out of this very question of whether a person is employed or not. It was a WorkCover claim. This lady came to see me. She had been working for this chap running a cafe. Everybody employed simply got a very small sum of cash in hand, because they were all on pensions. She actually married this chap. He went off for his honeymoon by himself to Queensland. While he was away she appointed herself the manager. Having appointed herself as the manager, she went out to buy food for the staff—their food must have been too good—and had a collision on the way back. In those days it was not covered by TAC; it was a WorkCover claim, so we are going back a long time. The insurance company said, 'You were not employed.' We said she was, so we boxed on in whatever the jurisdiction was for WorkCover those days—it keeps changing—and she eventually won. The authority was happy that she was an employee. Even though he said, 'You can be the manager,' he did not expect her to pay herself the proper wage and run the show like a manager should, because she had been working for him for years with a small amount of cash in hand. You will get it repeatedly in other areas where sometimes the person can get some government assistance and so gets the employer to fill in the form to say that he is getting paid less money than he actually is. It is all cash in hand.

Senator McKENZIE: Are you serious? That actually happens?

Mr Ludbrook: It happens. I said to one employer: 'In my view it's a crime. It's privileged what you've told me, but basically you better pay up.' And so he made a claim for the cash in hand he had received, because the employer had no proof that he had paid him enough. I am sure he was telling the truth. It is not always the wicked employer who wants to play games; sometimes employees know the ropes and literally run the show.

Senator McKENZIE: I think the greatest risk is in that mutually beneficial arrangement. You did not mention the tax implications. Yes, there is the welfare rort, but there is also the—

Mr Ludbrook: He would have been taxed on the lower rate, not the cash in hand. He pays a lower tax.

Senator McKENZIE: So rather than paying any tax—

Mr Ludbrook: He still has to pay tax on what the employer declares is his income, but he is getting cash in hand heaps more than that. This employee went and complained about it, and my advice to him was that he had no proof that he paid him, he paid in cash in hand, he should have paid him the correct amount, and to not have anything to do with him again. It was in my view a criminal offence. As I said, I have no expertise whatsoever in this area, but I have been in practice a long time and come across all sorts of horrible rorts that are being performed by both employers and employees.

CHAIR: I think one of the biggest problems is the lack of record keeping when we are in that situation. If someone is not being treated as an employee and simply being paid cash, there are rarely records being kept on hours worked on anything like that, so unless the employee is diligently keeping a contemporaneous diary of the hours that they worked—

Mr Ludbrook: And they do not.

CHAIR: there is very little for anyone to go on, especially if the employer then says, 'They never worked for me.'

Mr Ludbrook: Overtime is a classic, though, because time and time again employees do not get paid overtime, and when they come and see me, they have not kept proper records and so there is nothing to go on at all. Those are the sorts of problems that tend to come to us at the centre. All those other sorts of rorts and things, basically, you do not seem to see at the centre; you just see them in private practice.

Senator McKENZIE: I think this has been very useful.

Mr Ludbrook: I am happy to answer any questions. I have been practicing a long time. As I said, I have no expertise, but I did do a lot of unfair dismissal. I worked for Ryan Carlisle Thomas as their expert in victim assistance, but I finished up doing a lot of conciliation conferences—I think that is what they used to call them—where they used to come to Ballarat, sit around and try to work things out. Again, my only observation about wrongful dismissal is that I do not think phone conciliation conferences are nearly as successful as the face-to-face ones we used to have. That is just my own observation.

CHAIR: Thank you very much for your presentation to the committee today.

Mr Ludbrook: Thank you for having me.

NEYLON, Mr Brian, Human Resources Manager Australia and New Zealand, McCain Foods (Australia) Pty Ltd

THIN, Mr Karl, Plant Manager, Ballarat Potato, McCain Foods (Australia) Pty Ltd

[14:44]

CHAIR: I welcome representatives from McCain Foods. I am sure you were very pleased to hear Mr Ludbrook say he was not talking about McCain in any of those examples. I saw the smiles down the back. I understand that information on parliamentary privilege and the giving of evidence to committees has already been provided to you. I now invite you to make some opening remarks to the committee, and that will be followed by some questions.

Mr Thin: First of all, thank you for inviting us to provide some evidence at the hearing. We are pleased to assist the committee wherever we can. Given that we did not make a written submission, we considered it was important to provide some background on McCain and our involvement with the Fair Work Act so that all members of the committee can fully understand why we are here and what information we may be able to offer to be of assistance. I will start with background around McCain and then the negotiations that we were in with the Australian Manufacturing Workers' Union during 2016.

McCain Foods Australia is a wholly owned subsidiary of McCain Foods Limited in Canada. In Australia, we make a number of frozen products including potato products, pizza products, vegetables, prepared meals and also desserts. In Ballarat more specifically, we have a potato products plant, and a pizza and meals plant. We supply the domestic market within Australia and we export to a number of countries.

With respect to our impact in the community, we have been a significant employer in Ballarat for over 40 years, employing around 600 people at the Wendouree site, many of whom have been with the company for a very large number of years. We contribute around $52 million in annual wages and salaries into Ballarat, and most of that goes into the local economy, as well as around $5 million worth of superannuation annually. We have around 700 suppliers that are supplying our operation in Ballarat, and that has a value of around $180 million a year worth of income to those suppliers. Included in that are our local trucking and transport companies, to the tune of about $6½ million, and we have, I guess, between 1,300 and 1,400 deliveries every month coming into the site. We also engage a number of local tradespeople and, during the fiscal year of 2016, contributed over $670,000 in donations to local schools, charities and sporting organisations.

As the committee may be aware, we recently announced that we are going to invest some $57½ million into regenerating the Ballarat potato plant, which we see as securing the future of the Ballarat site for the next 15-odd years. As part of the regeneration project, our aim—we have obviously started this work—is to upskill around 100 employees at the site and generate another 100-odd construction jobs through the phase of the project. The project itself will increase the capacity of the plant by around 25 per cent and will result in another $12½ million going into the local economy from potato farmers over the next five to eight years. The on-flow of that of course is the additional jobs for the transport operators, the suppliers and, in fact, the other supply channel operators as well.

We are an extremely proud to be part of the Ballarat community. Despite our dispute in 2016, we believe that our involvement in the Fair Work Act—the McCain workforce has traditionally attracted a high union membership, but we have around 600 employees at that site, and a large percentage of those 600 employees are covered by that union. During the negotiations, which obviously went on for a longer period than we anticipated—we started negotiations back in March-April 2016—we worked tirelessly through that process with the AMWU. In fact, we consulted with the Fair Work Commission during this process not only to ensure that we were able to confirm to ourselves that we were obeying the letter of the law of the act but also to work our way through the process of getting to an outcome. We sought bargaining assistance at about month 4 into the negotiation, seeing that we were struggling to get anywhere with the negotiations. In fact, when we finally did come to an impasse, despite the assistance of the Fair Work Commission, we obviously moved on to presenting an offer to our employees that we sought a vote on.

At the end of the negotiations, which I am pleased to announce have come to a conclusion, we were basically in the position where we withdrew or reduced all 67 of our claims that we brought to the table. The union, on the other hand, were able to reduce their claims from around 16 to 10, and we were able to sign-off on an agreement and register that with the Fair Work Commission about mid-December 2016.

I want to reiterate that we are very pleased to assist the committee in any way we can. As I said, we are a proud employer in Victoria, and we believe that we make a significant contribution. We believe that we followed the Fair Work Act and negotiated fairly throughout 2016. As I said, we sought the assistance we required from the Fair Work Commission throughout that process and were able to come to a successful outcome in December. We

are now busy investing millions and millions of dollars into our operation here in Ballarat to ensure that we maintain and upgrade the infrastructure and, more importantly, upskill our workforce and secure the future of the Ballarat McCain site.

CHAIR: Thank you, Mr Thin. The committee's interest in this dispute is fairly narrow, and it goes to the issue of the balloting process. Negotiations can be tough from time to time, and no-one here has been complaining about that. But we wanted to make sure that we extended an invitation to you so that you would also have an opportunity to talk about this area as well. We are very pleased that the dispute is resolved, and good luck with that and the investment. I hope it goes well for Ballarat, for the company and for the employees. You wanted to test the workforce with an agreement that you put to them. That is absolutely fine. I just want to ask, though: how and why did you choose the Australian Election Company to do that on your behalf?

Mr Thin: It was a part of a process. We entered into the process of trying to establish how we were going to present information to our employees, considering that, at the time, we had reached an impasse with negotiations. That was a tested impasse as well, so, as we said, we worked with the Fair Work Commission around that. We first went to the Victorian Electoral Commission to seek confirmation that they first had the capability of conducting such a ballot.

CHAIR: Sorry, I just want be clear. Did you just say the Victorian Electoral Commission?

Mr Thin: Sorry, the Australian—

CHAIR: Electoral company?

Mr Thin: No, commission.

CHAIR: The commission?

Mr Thin: Yes, the commission in Victoria. They, at the time, were dealing with the local election for the local council. They were unable to provide the resources or have the capability to undergo such a ballot that we were requesting. So they did not have the capability, if you like, to partake in that.

CHAIR: So that would have been your first preference?

Mr Thin: That was our first preference.

CHAIR: To actually have the AEC do it?

Mr Thin: Correct. We then worked through a process of: if not them, who else?

CHAIR: And you saw there was another AEC!

Mr Thin: Correct. An Australian company came up to us as a viable option, of which we went through the process and ensured that they had the capability to provide an outcome and meet the requirements that we had by abiding by the legislation. We also went through and said: 'Do they have the capability? Tick. Do they have the ability to provide the timeline that we require? Tick.' That was, pure and simple, how we ended up with the Australian Election Company completing the ballot for us.

CHAIR: A number of issues arise straightaway to me. First, they are a Queensland based company, which then would make it difficult for a Ballarat based employee group, and yourselves, I suspect, to actually scrutinise the counting of the ballot.

Mr Neylon: I think there are a couple of issues there in terms of the Australian Election Company who did our protective action ballot. They did it electronically so they were not all on site. As Karl said, they were our first preference. The second preference was to conduct a ballot electronically, which they provided to us in terms of how they would go about doing that. We saw that as being suitable based on what we had been through previously.

CHAIR: A number of these things are in hindsight. You may have seen the Australian Election Company's submission to the committee. They have actually identified things that could have been done better or improved as well. I want to put those sorts of things to you too. You are client in this situation and the sole client. Would it have been preferable for the client to be seen to be not only the company but the workforce itself?

Mr Neylon: We obviously commissioned the ballot.

CHAIR: And you pay for it.

Mr Neylon: Obviously we met the requirements in terms of providing a list of those that were eligible to be involved.

CHAIR: That comes to the next question. The employees' adviser said they were not in a position to actually agree with that list or not and they would have liked to have been. They would have liked to have known who the

eligible voters were and to be able to scrutinise that as well to ensure that the workforce is the workforce. They still dispute the number of people that were on the roll that were asked the question and the amount that they say are the eligible people to vote in the factory.

Mr Neylon: We take the records based on fact, which is the payroll records. We provided the list of names to the Australian Election Company. We also had to certify that when the agreement was lodged with the Fair Work Commission those numbers were identical, and we had no reason to provide anything but the employees that work for us to give them the opportunity to participate.

CHAIR: Were the workers you brought in from New Zealand included on the list?

Mr Neylon: No, they were not.

CHAIR: At what level did you cut off former casual employees from being part of that list? Were none included?

Mr Neylon: All current employees—current being eligible to receive payments from McCain Foods—were included. Included in that were a number of casual employees, but no previous employees were included in that number at all.

CHAIR: Just explain to me where you drew the line with casuals. If someone did a casual week for you 12 months ago and were still on your books as someone that could be called in from time to time, did they get a vote?

Mr Neylon: If they were eligible employees. We do not have any employees that only work one week in a year. We go through and review our workforce on a regular basis to see who is current. I can say today that everybody who participated in the ballot is still a current employee.

CHAIR: Maybe you could just tease out again exactly what you mean by 'current employee'.

Mr Neylon: A current employee who is eligible to receive wages from McCain Foods.

CHAIR: But at what point in time? Maybe explain to me, just so I can understand this, the seasonal nature of your work. You have a lot of seasonal workers?

Mr Thin: No, we do not. In our potato operation we run a 24/7 business which runs for circa 320 days a year, so there is no seasonal nature to that business. There are seasons within that business, but it is not a seasonal nature from a workforce perspective. In our prepared foods business, which is the other significant contributor to our labour requirements and our workforce—our employee base on the Ballarat site—they are pretty consistent all through the year. So there is no seasonal nature, by definition, to the Ballarat workforce.

CHAIR: So what do you use casuals for?

Mr Neylon: To supplement our workforce, obviously, depending on what products we are running and to cover planned absence and unplanned absence.

CHAIR: Again, how did you then draw a line around the casuals that would be eligible.

Mr Thin: If those casuals were engaged in our payroll system, those employees were eligible to be a part of the vote, and, as Brian has already mentioned, we review those employees on a regular basis to ensure that the payroll records are a true reflection of the workforce that we have at our Ballarat site.

CHAIR: So if someone worked casually for you 12 months ago but was still on your payroll records but had not received any payments for 12 months, would they have been considered an eligible employee?

Mr Neylon: They would have. We would have obviously reviewed why they had not been available for work for 12 months—and we do not wait for 12 months where people have not participated in work for McCain Foods; we review that on a quarterly basis in terms of who is working and who is unavailable for work. We have long-term absence and illness—

CHAIR: So can you say that a casual who had not worked for a quarter would not have been on the list?

Mr Neylon: Possibly—only if they had been removed from the payroll. So we review it—

CHAIR: What I am trying to get at is: where are they? There is nothing wrong with casuals, in my view, being part of the agreement, because they will be working under it if they are regular casuals, but if someone has just been on the books and has not had work for a quarter, or a year or two years, where do you draw the line? If they are still on your payroll books, I am not sure that that—

Mr Thin: It is not in our interests to continue to have employees on our books who are not working, because there are obviously some administration costs associated with that. So, to Brian's point, every quarter we go through and we review—especially with the casual workforce, to ensure their availability remains current, to

ensure that we have the correct numbers to service the needs of the business and also to make sure that they are still willing to be a part of our organisation.

CHAIR: I understand there may have been some redundancies in the lead-up to the dispute?

Mr Neylon: No, that was back in 2015—the end of 2015.

CHAIR: So none of those people would have been on your books still?

Mr Neylon: No, they would not.

CHAIR: Would any contractors have been on your books?

Mr Neylon: No.

CHAIR: So, really, what you are saying to me is that the only area where there could be some confusion might be around casuals, and you are not confused. I am still not 100 per cent convinced. I am not trying to put words into your mouth. But there was a lot of angst—and I know, because the workers told me about it—at the time about the company effectively trying to pull a fast one and put people on the list that were not eligible to vote. That created a lot of angst. In hindsight, now that the dispute is resolved and, hopefully, everyone is back to normal, do you think it would have been better practice to ensure that both parties agreed to the actual electoral roll?

Mr Neylon: I think there are a couple of issues. One of them is the privacy part of it. The AMWU does not represent the total workforce at the McCain site. They obviously have records of their own AMWU members, and they are the only ones that they represent through the bargaining process. For them to vet the total workforce, we needed to be careful in terms of the privacy of those employees who have chosen not to be represented by the union, and, when it became time for the protected action ballot, only the union members could participate. So they knew exactly the number of members that they were representing. We, as a business, produced the total workforce, as I said, through the payroll system, and that is where we came up with the total. And we were under scrutiny as well.

CHAIR: But the non-union workers are not secret workers. The majority of the workforce is covered by the union and is across there, so they would know. They would have a fair idea of what the employment numbers were, surely?

Mr Neylon: There have been some numbers raised, in terms of what their perception was. I do not know where they have come to those numbers. But obviously we have to provide—

CHAIR: You have given me a 600 figure—is that exact?

Mr Neylon: Those 600 employees that are on the site include people who are servicing, based on a salary, as well. This could be part of the challenge that we have around understanding the numbers.

CHAIR: They say they believed there were around 390—or 400, being generous—people covered by this agreement that was being voted on and the actual ballot I think was 438 or something—

Mr Thin: 431.

CHAIR: So there is a fair discrepancy. It is not a lot in actual numbers, but as a percentage that is a pretty big discrepancy.

Mr Thin: They would have been able to validate their membership. We were able to validate through our payroll records our employees who were covered by that agreement.

CHAIR: Did they raise this issue with you during the conduct of the ballot?

Mr Neylon: Yes, they did. They sent emails and we responded to those emails in terms of the eligible employees who were open to participate in the ballot. When we lodged the agreement with the Fair Work Commission for certification I had to sign a stat dec confirming the numbers. The number was 431 on the stat dec that I signed that was submitted to the Fair Work Commission for certification. So, in terms of the number, we believe the number is the number. I know they have a view in terms of what they believe the number is, but I have no idea what they base that on.

CHAIR: It is a general issue of interest to us when there is not an agreed position being put out to a ballot. It is generally when members or the bargaining agents do not agree and the company puts it out in the first place to them to vote. This happens often. There is a lot at stake. Companies are obviously putting that ballot out because they have some expectation that it will be successful. Of course I understand absolutely the counterview that yes, it is in the company's interest and therefore there ought to be some scrutiny of the role of the actual balloting process.

In the end I understand the vote was fairly overwhelming one way so nothing turned on it, but that does not stop me being interested in the principles of the ballot. McCain is a large company and I believe it operates with some integrity in this space, but not everyone will. I am trying to come down on whether there should be a requirement that both parties have to agree on some of the steps and both parties have a right to participate in a ballot. These are the fundamental principles of the democracy in which we live and I suggest the same rules and principles should apply to all forms of balloting. Now that the dispute is over and everyone is back on track do you think you would you have done some things differently? If you look back at that, do you think you ought to have done the balloting differently to the way you did it?

Mr Neylon: I think in terms of notifying the result of the ballot, yes, on hindsight we probably could have notified the bargaining reps at that time. We did notify the employees because ultimately we went for a ballot between the company and the employees because we had reached an impasse. Probably we can reflect on when the AMWU conducted their final ballot for the certification of the agreement. Only 90 of the 430 eligible employees participated. So, in terms of transparency and scrutiny, 90 out of 431 from a company perspective, even though it had been supported, we could probably ask the same question in reverse.

CHAIR: Well do you want to? Do you think there ought to be a proper conducted written ballot to approve the agreements as well?

Mr Neylon: Yes, I do.

CHAIR: Could it be done faster that it was done? I am interested in this. The approval ballot was simply done at a mass meeting. You have shiftworkers. There was not a series of rolling meetings across different shifts? Was that difficult? Were you able to facilitate that or did not want to facilitate that?

Mr Neylon: We did want to facilitate that. The union only wanted to have one mass meeting. This was not a company-driven ballot; this was a union-driven ballot.

Mr Thin: We have multiple work patterns on a site as large as ours and we provided the opportunity for that, but that offer was not taken up and the request was to have one ballot with a show of hands.

CHAIR: Mr Neylon, what did you say on the stat dec?

Mr Neylon: I just confirmed the numbers that were forwarded to me by Angela McCarthy, the AMWU organiser: that 90 out of the 431 participated and voted in favour.

CHAIR: All right. That is a process that the commission requires, obviously?

Mr Neylon: It does.

Senator McKENZIE: Thank you very much for appearing. My question goes to the Fair Work Ombudsman and how the information that you are able to garner from the commission and the ombudsman is able to be received. We are getting a bit of evidence saying that it is a bit difficult to wade through the changes and to get the support you need when you need it around advice. I am assuming you have got HR managers coming out of your ears.

CHAIR: I think Mr Neylon might be one.

Senator McKENZIE: He might not be the only one.

Mr Neylon: I refute 'coming out of our ears'!

Senator McKENZIE: There we go. I want to get a sense of how useful that information is for industry to be able to work within the industrial relations system.

Mr Neylon: I think that is a very complex question in terms of what kind of information is shared and how it is shared. Obviously, we have had disputes before the Fair Work Commission during the course of McCain being in operation. Really, we rely on case law historically. A lot of it is research that we do ourselves. In terms of changes, I would say that that information comes out in a broader context than for individual manufacturers. We have to work our way through what the law tells us and what we are able to take advantage of.

Senator McKENZIE: So, the onus is really on you, Mr Neylon, to find it, rather than the information coming directly to you?

Mr Neylon: Very much so.

Senator McKENZIE: Is there a better way that it could be done?

Mr Neylon: In terms of the sharing of information, I certainly believe that we could improve. When you look at the Fair Work website, they have case decisions over the last two days, over the last week and over the last decade. You can put in search topics and find the information in terms of decisions. Really, that is the case law

that you refer to. 'Are we actually doing what we should be doing if we are challenged? If not, what do we need to take into consideration?'

Senator McKENZIE: We had some evidence around conciliations conducted over telephones being quite difficult. Did you have any feedback for us?

Mr Neylon: Generally, in unfair dismissals, the first part of the process is telephone conciliation. Generally, there is a consensus that we will try and resolve the issue before it goes to an arbitrated hearing. How well is it done? I think we will all have a view.

Senator McKENZIE: What is your view?

Mr Neylon: It appears that we do it to get an outcome, and, potentially, the strength of both arguments are never tested, apart from how we resolve it.

Senator McKENZIE: And it is an issue that I pursue at Senate estimates with the Fair Work Commission—that we have these, sort of, solutions brokered rather than going through the process of coming to a formal decision. Did you have a comment, given that you use case law in the way that you do, around how the Fair Work Commission is managing the workload that it is currently under, and the role of the commissioners themselves versus their staff?

Mr Neylon: I think the conciliators are generally not Fair Work commissioners, as such. They are obviously appointed to try and resolve a dispute, and that is what they try and do: resolve a dispute. In terms of 'could that be done better?' I would say, generally, that resolution is the outcome which is probably suitable for both parties, and that is what we strive to achieve. I do not think it is tested too much in terms of the strength of the argument of both sides, if I am honest. We are a commercial business. We look at the commercial risks in terms of what we are doing to see if we can get a resolution.

Senator McKENZIE: Thank you.

CHAIR: Thank you very much for appearing before the committee today.

Committee adjourned at 15:14