



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

**Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery)  
Bill 2020**

(Public)

WEDNESDAY, 10 FEBRUARY 2021

ADELAIDE

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**SENATE**

**EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE**

**Wednesday, 10 February 2021**

**Members in attendance:** Senators Davey [by audio link], Farrell, Faruqi [by audio link], McGrath, O'Neill, O'Sullivan [by audio link], Patrick, Pratt [by audio link], Sheldon [by audio link], Walsh.

**Terms of Reference for the Inquiry:**

To inquire into and report on:

Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020.

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**PENNINGTON, Ms Alison, Senior Economist, Centre for Future Work, Australia Institute**

**STANFORD, Dr Jim, Economist and Director, Centre for Future Work, Australia Institute [by audio link]**

**Committee met at 09:00**

**CHAIR (Senator McGrath):** I declare open this hearing of the Senate Education and Employment Legislation Committee's inquiry into the provisions of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020. 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 the 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 determine whether it will insist on an answer, having regard to the ground on which it is claimed. If the committee determines to insist on 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.

For the purposes of time management, I would ask that witnesses table their opening statements so we can proceed direct to questions.

I now welcome representatives from the Australia Institute's Centre for Future Work. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Are you able to table your opening statement so we can proceed straight to questions? I will give the call to Senator Farrell.

**Senator O'NEILL:** Chair, can we just find out exactly how long their opening statement is?

**Ms Pennington:** It's just over two minutes.

**Senator O'NEILL:** I think it might actually be helpful to set the scene with that.

**CHAIR:** We can have one opening statement of two minutes.

**Ms Pennington:** Thank you. This fair work amendment bill proposes sweeping changes to Australia's labour laws at a very fragile moment in Australia's economic history. In our judgement, several features of this legislation will enhance the power of employers to hire workers on a just-in-time basis, suppress wages and undermine terms and conditions. Key measures proposed include allowing employers to hire workers on a casual basis in virtually any position deemed to be casual, with weak and inaccessible permanency conversion rights enabling long-term casual labour use; reducing permanent part-time loadings and hours security, allowing employers to treat permanent workers as if they were casual, with the power to adjust hours up and down without penalty; and exempting enterprise agreements from the better off overall test, allowing them to contravene modern award standards. This will increase below-award agreement-making and repurpose enterprise bargaining into a mechanism for lowering wages and standards rather than raising them.

Other measures aimed at the Fair Work Commission would accelerate the approval of low-quality enterprise agreements, including 21-day approval timelines, the weakening of employer requirements to demonstrate that their staff have genuinely agreed to the EA, and restrictions on the participation of unions in the review process. Finally, employers would have the ability to implement eight-year wage locked agreements—greenfield agreements—at new projects or businesses, without input from or ratification by affected workers.

Together, these changes would constitute a significant weakening of institutional supports for improving wages and working conditions. Enterprise bargaining changes, in particular, would create a situation reminiscent of the Work Choices period of the late 2000s, when employers were given considerably more unilateral power to determine terms and conditions.

Most concerning, the bill is being introduced at a fragile moment in Australia's history, when wages are already extraordinarily weak. Even before COVID, wage growth had decelerated to the slowest sustained pace since the Depression, growing by less than two per cent per year since 2015. Now wages have fallen to an utter standstill, growing by just 0.1 per cent in the September quarter.

Most economists agree Australia's economy desperately needs stronger wage growth. Just last week the Governor of the RBA, Dr Philip Lowe, noted wage growth would have to be materially higher before normal

economic and financial conditions could be re-established. Deliberate efforts to boost wages are clearly required to support a sustainable and inclusive recovery, boost consumer spending and strengthen confidence. But this bill does exactly the opposite, expanding employer power to use insecure labour and low-wage enterprise agreements. This will put more downward pressure on wages. Thank you for your interest, and I look forward to your questions.

**CHAIR:** Thank you.

**Senator FARRELL:** Ms Pennington, are you based in Adelaide?

**Ms Pennington:** I am originally from Adelaide, but I'm now based in Melbourne.

**Senator FARRELL:** So you've flown over here; that's terrific. We need more tourists like yourself in South Australia!

**Ms Pennington:** I'm staying with my mother—so, unfortunately, no accommodation boosts!

**Senator FARRELL:** But you'll be eating in restaurants, coffee bars and those sorts of things—

**Ms Pennington:** Absolutely.

**Senator FARRELL:** helping our economy. Good; we need every little bit of help! We're in a pandemic, and I wondered whether you could give us more of a picture of what you're saying about the importance of wage growth in a pandemic.

**Ms Pennington:** The starting point is to recognise that the big deceleration we had in wages growth set in before the COVID pandemic hit. From 2013 to 2015 wages bottomed out by half. Before the pandemic hit we had an acknowledgement from the RBA and many economists and commentators that wages growth had to materially increase in order to fuel demand, because more demand means that producers have confidence that if they produce things people are going to buy those things. Before the pandemic hit, if you took out the effects of public spending, we had almost already had a recession in the private sector. The relationship of slow wages growth to slowing economic performance was recognised before the pandemic. Now we're in a time of building out of the recession. We've had stronger economic growth than predicted. But we have very slow wages growth. What that means is we could have this sugar-hit period off the back of the fiscal stimulus, but until we can rebuild the foundations of meaningful increases in demand through wages growth that recovery is going to be hampered in the long term.

**Senator FARRELL:** Just so I understand you correctly there: we were slowing before the pandemic, and that had really exacerbated the issue of wages growth in that period; and we've been helped a little bit by the economic stimulus, but now's a crucial time in terms of the future. Is that a summary of what you're saying?

**Ms Pennington:** Yes. That is an accurate summary.

**Senator FARRELL:** How do you see this particular legislation impacting on wages growth?

**Ms Pennington:** The combination of the proposals in the legislation—the expansion and solidifying of casual labour use, which decreases bargaining power in the workforce, combined with the ability to create lower wage enterprise agreements—will deepen existing pathways of wage suppression and open up new ones. It is our assessment, given the severity of the scale and the length of wage stagnation we've had in Australia, that opening up those new pathways now through this new legislation at a time of very high under-utilisation in the labour market and low bargaining power will exact a powerful downward pressure on wages.

**Senator FARRELL:** If you were wanting to restart wage growth you'd be doing exactly the opposite of what's in this legislation, wouldn't you?

**Ms Pennington:** Absolutely. Because of the scale and the severity of wage stagnation, deliberate wage boosting policies are pertinent. Now that we're out of the worst of the pandemic—fingers crossed we continue with our successes—it's important we set policies that allow us to rebuild in a sustainable and inclusive way, otherwise we're going to be coming to the same position consistently—that is, consumer spending isn't increasing, we have contraction in the private sector, business investment isn't going anywhere. If we continually decrease the cost of wages, there will be less and less of an incentive on business to invest, because they can increase their profit rates by reducing their wages bills rather than by investing in more productivity-raising and enhancing investments that are better for the economy in the long term.

**Senator FARRELL:** Can you tell us why increasing the level of casualisation is so damaging in this particular environment?

**Ms Pennington:** I would start by addressing what is often put forward in argument for this new, expanded definition of casual work, which is that there is not enough confidence among employers to hire casuals at the moment. That is not borne out in the economic data.

**Senator FARRELL:** It's the opposite, isn't it?

**Ms Pennington:** Exactly, yes. Casual work has dominated employment growth in our post-COVID recovery. Between May and November, 62 per cent of all jobs created were casual. That's 400,000 jobs in six months, or 2,200 every day. It's the fastest growth in casual work in our history. What that shows is, first of all, that claims that there is a lack of confidence among employers to engage in hiring casual work is not credible. It also shows that the pandemic is intensifying and entrenching the use of insecure and casual work in the economy. Casual workers lost their jobs at eight times the rate of permanent workers and they were less likely to get supports. Then we've got this explosion in new casual jobs. An economy that has up to a quarter of its employees on highly unstable and insecure incomes not only does a whole lot of damage to those individual workers and families who depend on secure incomes to meet their mortgage payments, rental payments and overall payments; it also does wider economic damage because more insecure people are less likely to take risks and invest in things. They are more likely living week to week; they don't know if their income is going to be the same one week to another. That dampens consumer spending overall. That's one example of the macroeconomic impact, including—

**Senator FARRELL:** If I can just stop you there, this legislation actually does the opposite of what we really want the economy to be doing at the moment. Is that a fair assessment of what you're saying?

**Ms Pennington:** It is absolutely a fair assessment. Australia stands out internationally with the provisions that we allow employers to use casual labour. It is very clear that we need to be investing in more jobs and improving the quality of those jobs. The legislation proposed does the absolute opposite of that by expanding employer power to determine who is a casual worker and who is not. The whole point of minimum labour standards is to protect workers against inappropriate employment behaviour. So allowing employers themselves to determine what is appropriate or not is clearly defeating the whole purpose of those minimum standards.

**Senator FARRELL:** Obviously Dr Stanford's on the phone. Dr Stanford, if at any time you want to jump in and add to the very sensible comments of Ms Pennington, please feel free to do so.

**Dr Stanford:** Thank you, Senator. I'm in full accord with what Ms Pennington has said so far.

**Senator FARRELL:** She's doing a very good job! The RBA has obviously taken quite an interest in the issue of wages growth. Can you perhaps expand for us what you understand the RBA says we should be doing at this time and how what this legislation does conflicts with the intentions of the Reserve Bank to restore our economy to growth?

**Ms Pennington:** I can perhaps guide your memory to before the pandemic, when Dr Philip Lowe requested that workers go out and ask for wage increases because we had a wages crisis. Just a couple of weeks ago, Dr Philip Lowe said that our inflation level is well below the target band of two to three per cent, and wages would have to grow for that to change. What this means is that growth in demand is being hamstrung at the moment because there is an insufficient flow of income going to the population, which predominantly occurs through wages. Long-term and sustainable recovery is going to require the foundation of economic growth to be rebuilt and the foundation for demand to be rebuilt both now and in the future.

In terms of how this legislation accords with the wages crisis and the slow wages growth we have now, it is our assessment that the combination of these proposals, which include direct cuts to pay through perma-flexi—the new systems of making permanent part-time work flexible—as well as expanding casual work, which is low bargaining power and lower-paid work, and also low-wage enterprise agreements, will all come together to exact a very powerful downward pressure on wages, which is the exact opposite of what is being asked for and demanded by not just the Governor of the Reserve Bank but many economists.

**Senator FARRELL:** This legislation is all about trying to encourage casualisation, which you would say is not the correct direction in which to go. Is there any evidence that the current labour laws prohibit or discourage the use of casuals? Is there a problem where employers are screaming out for access to casual employment?

**Ms Pennington:** There are very few restrictions, if any, on employers' use of casual labour, and the proposed new definition of 'casual work' will entrench and expand that power. One corresponding proposal with the casuals package of changes is the supposed increase in rights for casual workers to create pathways to permanent work. What those new provisions do is say that, for any casual worker who has been on the books for 12 months, six months of which have been regular schedules, their employer must offer them permanent employment. But they can refuse to offer that on reasonable grounds, and, of course, 'reasonable' is predictably loose and difficult to knuckle down on. The combination of this new definition and very inaccessible and actually weakened

permanency rights will result in an expansion of employers' power to use casual work. This is going to decrease the earnings of workers, because casual workers earn less than permanent workers. In fact, data confirms there is a clear correlation between casual work and poor compensation. Median weekly earnings for full-time employees who are casual are 26 per cent lower than for permanent workers. And for part-time workers the difference is even greater; it is 60 per cent less than for permanent part-time workers. So there is clearly an incentive to expand casual work. One of the biggest myths is that casual workers earn more than permanent workers—that they are compensated for the lack of entitlements, including annual leave and sick leave. So the combination of the two casuals proposals will absolutely expand the amount of insecure work. Australia is already leading internationally in the worst way for our levels of casual work and insecure labour.

**Senator FARUQI:** Good morning, Ms Pennington and Dr Stanford. Thank you so much for presenting evidence today and answering our questions. In parliament, the Attorney-General said that the changes that this bill brings will ensure that workers get shifts and get paid. But from what I've heard from you today that is actually not the case and workers will actually get paid less. Would you agree with the Attorney-General, or is it the other way round?

**Ms Pennington:** Sorry, Senator, what was the first part of your sentence? You said the Attorney-General said this and then said workers would get paid more. What was the first part of that?

**Senator FARUQI:** The Attorney-General said that these changes will ensure that workers get shifts and get paid more. Do you think that workers will get paid more if this bill is passed through parliament?

**Ms Pennington:** There are no pathways in which this bill will be supporting higher wages growth. I can't see any pathways. In fact, all proposals lead to cuts to wages or lead to an undermining of wage growth in the long-term. Probably the most concerning proposal is the freeing of the creation of enterprise agreements that undercut the minimum awards and reductions in the scrutiny of those agreements in the Fair Work Commission through the implementation of 21-day legislated time lines. There is also a weakening of genuine agreement tests and, overall, of the system of protections that ensure that employers don't create unilateral agreements over and above the interests of workers and agreements that undermined the minimum awards.

The last time we had enterprise agreement wage-setting policies like the ones being proposed in this legislation was under the Work Choices regime from 2005. My research found that what happened in that time when the no disadvantage test was abolished and it allowed enterprise agreements to undercut awards was there was a flood of non-union agreements into the enterprise agreement system. Corresponding with that change was also a weakening of protections and tests by Fair Work Australia at the time—now the Fair Work Commission. The number of non-union agreements surged in that period when the no disadvantage test was introduced, from 20 per cent of all agreements in 2004 up to 60 per cent before the Fair Work Act was introduced.

My research also found that, while thousands of these agreements were approved, the vast majority of them did not even include wage increases in those agreements. They did not have specified wage increases, so any claim that these measures are going to lead to wage growth is not borne out in the evidence when we have our own historical experience that proves otherwise. But what it might show is that we have more agreements but we won't have wage growth; we will have more workers sitting on fixed or no wage increases. These agreements can tick on for many, many years after they have been created, and we know that there are 450,000 agreements still from the Work Choices period out there in the economy now.

**Senator FARUQI:** Given that historical experience, is it definitely a concern that the BOOT exemption in the bill will result in a new stock of below awards type agreements into the future?

**Ms Pennington:** Yes, it is my assessment that there are no protections in this bill against what is a clear and outstanding problem in the bargaining system, which is there is no trigger when an agreement has expired for that agreement to be renegotiated, there is no workplace-level trigger, there is nothing in the Fair Work Commission that requires that agreement to pop up nor is there any request on the employer to engage in a new negotiation. So what that means is the agreement can tick over for years and years after, and we know that they do. There are still, like I said, up to 450,000 agreements made in the Work Choices that still exist across the economy.

In the provisions in the bill, there is the introduction of two-year time limits for the length of an agreement that undercuts the BOOT. But because that trigger doesn't exist, it means that those agreements will almost certainly just replenish any stocks of Work Choices era agreements that and. All it does is recreate the same problem in the Fair Work Act time.

**Senator FARUQI:** Given all that you have told us today and what we heard the other day—that this bill doesn't improve things, it makes wages worse and it makes the economy worse—can you see any logic in



proposing this legislation, especially at this time? Is it just an example of the government capitulating to business lobbies?

**Ms Pennington:** I don't see any economic argument for creating new pathways to suppress wages at a time when bargaining power has collapsed, when collective bargaining and genuine collective bargaining barely exists and when we have very high levels of insecure labour and hundreds of thousands of people who are hungry for work. That is an oversupplied labour market with more and more desperate people and that is what happens in a recession. So for government to introduce new policies and new frameworks that allow further wage cuts at this time beggars belief. It undermines our economic interests, all of ours—employers included—in the long-term. They are measures that will come back and bite them in the butt, really, because if you have a population that can't buy the things that you produce then we are going to spiral. That is just the macro economic impacts. It would be irresponsible to introduce this legislation at this point in time.

**Senator FARUQI:** It sounds like it is.

**CHAIR:** Do you support the concept of the conversion of regular casual employees to full-time or part-time employees if the employees prefer it?

**Ms Pennington:** Yes. I absolutely advocate for stronger conversion rights. I don't believe that the bill actually provides those conversion rights.

**CHAIR:** Do you accept that casual employees should have the right to choose whether to seek conversion?

**Ms Pennington:** Yes. I believe we should protect employee choices.

**CHAIR:** Are you aware that not all casual employees have casual conversion rights at the moment?

**Ms Pennington:** Yes, I am.

**CHAIR:** And that this bill will provide them?

**Ms Pennington:** I don't agree that the bill actually provides casual conversion rights, based on what I stated earlier, which is that the new benchmarks for permanency conversion are so high that it would be very easy for employers to avoid those benchmarks—requirements of 12 months on the books and six months of continuous scheduling. It's very easy for an employer to change the schedules of a worker from week to week, which is normally what happens under casual work, and those benchmarks won't be reached, and the rights will be inaccessible to a majority of casual workers.

**CHAIR:** Do you accept that the casual conversion provisions of the bill are more favourable to employees than the Fair Work Commission casual conversion award clause?

**Ms Pennington:** If this was introduced it would reach more people than the current modern award provisions, but I don't accept that this would actually materially increase the rights of permanency conversion among the workforce.

**CHAIR:** Can you explain how Labor's section 189 in the Fair Work Act compares with the proposed section 189?

**Ms Pennington:** Could you please tell me what those sections are? I don't know them off by heart. I could take that on notice.

**CHAIR:** Well, do either of them or both of them remove the better-off-overall test?

**Ms Pennington:** Sorry, but I don't know every exact clause in the Fair Work Act off the top of my head. So, if it's okay, I'll take that on notice.

*Senator Farrell interjecting—*

**CHAIR:** I don't need editorials from you, Senator Farrell. Now, you say in your submission that Australia is one of the only countries in the world that allows employers to draw up enterprise agreements without the involvement of an independent employee representative body, like a union. That's not correct, is it?

**Ms Pennington:** It's written in my submission and it is factually correct that Australia does stand out in the allowance of employers to create and draw up agreements without any interaction with an employee negotiator. Australia does stand out internationally for the practice.

**CHAIR:** Aren't non-union agreements permitted by law in many countries, including France, Ireland and Spain?

**Ms Pennington:** They may be provided, but there are stronger protections for independent employee representation in those countries than the Fair Work Act actually provides to negotiators in the Australian system.

**CHAIR:** You also say in your report that the bill reduces scrutiny of agreements as it 'blocks unions from contesting the approval of subpar agreements being proposed by employers'. That's also not correct, is it? Doesn't the bill amend the Fair Work Act to ensure that the Fair Work Commission focuses on the views and evidence of those directly involved with and affected by the relevant enterprise agreement?

**Ms Pennington:** One of the main proposals under the bill is to weaken genuine agreement tests, which are currently undertaken by the Fair Work Commission and are especially important in the event that those employees don't have someone representing them in negotiations. So, I think the bill will actually decrease the level of scrutiny and genuine agreement protections for workers.

**CHAIR:** Specifically, the bill provides that the Fair Work Commission may inform itself only on the basis of publicly available information as well as submissions and evidence from the parties involved, such as the employer, employees and of course the unions involved in the bargaining, and other employee bargaining representatives.

**Ms Pennington:** Is that a statement, or a question?

**CHAIR:** It's a question for you.

**Ms Pennington:** Could you please restate the question?

**CHAIR:** Specifically, it provides that the Fair Work Commission may inform itself only on the basis of publicly available information as well as submissions and evidence from the parties involved, such as the employer, employees and of course the unions involved in the bargaining, and other employee bargaining representatives.

**Ms Pennington:** That sounds like a statement, but I'm going to respond with some information. Given the level of de-unionisation, and because the enterprise bargaining system does not protect independent employee negotiators, a lot of organisations do not even know an agreement exists until it reaches the Fair Work Commission for approval, because there is no notification system. Such a system did exist in previous legislation but doesn't exist anymore. The current provisions allow the Fair Work Commission to draw on information and receive submissions from industry experts, including unions, who are industry experts in many cases. What the bill does is to block the Fair Work Commission from being able to engage in that submissions process and pull information from a broad variety of sources, on the basis that, unless those parties were a part of the agreement from the beginning, they can't have their say in pointing out, for instance, that the wage rate being proposed may be 15 to 20 per cent below an industry rate. I can't see any use. There's no necessity to block the commission from doing its job in a very difficult labour market with very difficult conditions where the commission is being flooded with non-union agreements written by employers, which they also need information to be able to assess. These new provisions in the bill would block the commission from being able to receive submissions from unions, which is one of the few ways that unions can actually engage in a discussion with the commission about what the industry standards and provide key information that would allow the commission to do its job better.

**CHAIR:** Thank you. That concludes your evidence today.

**Senator O'NEILL:** May I have one more question?

**CHAIR:** No, I'm sorry. We're going to stick to the schedule today.

**Senator O'NEILL:** I've come through all of the process to get to South Australia to—

**CHAIR:** We've all done this.

**Senator O'NEILL:** I have one question, and then you—

**CHAIR:** You can put it on notice. You can have one question, and the answer—

**Senator O'NEILL:** A recommendation to the crossbench from an expert such as you is really important, Ms Pennington. If you were to advise the crossbench—the five critical senators who will determine whether this bill, which you've critiqued very expertly this morning, advances and becomes the law of this country or whether it is turned around at this point to protect wages, jobs and job security—what would be your recommendation to the five crossbenchers?

**CHAIR:** You can take the question on notice. We do need to move on. Thank you.

**Senator O'NEILL:** It's a one-word answer, I believe, Chair.

**CHAIR:** No, that concludes it.

**Senator O'NEILL:** What's your recommendation, Ms Pennington?

**CHAIR:** I would ask you to take the question on notice.

**Ms Pennington:** Reject the bill.

**Senator O'NEILL:** Reject the bill—thank you.

**CHAIR:** So can we please move on. Thank you.

**Senator O'NEILL:** Chair, that's not a very fair hearing at all. Silencing the witness is not appropriate.

**CHAIR:** It's not silencing the witness.

**Senator O'NEILL:** That's what you're trying to do to every worker in the country.

**CHAIR:** No, it's not, Senator O'Neill.

**Senator O'NEILL:** Decent jobs, decent wage security—

**CHAIR:** It's not time for a preselection speech now, please. Ms Pennington and Dr Stanford—

**Senator O'NEILL:** I'm standing up for hardworking Australians and small businesses, Chair. You should let the witness speak.

**CHAIR:** Thank you, everybody. Thank you both for coming along today.

**CAVANOUGH, Mr Edward, Director of Policy, McKell Institute**

[09:33]

**CHAIR:** I now welcome the McKell Institute. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. We have your opening statement in front of us. I would prefer to go straight to questions. Senator O'Neill?

**Senator O'NEILL:** I will pass to Senator Farrell.

**Senator FARRELL:** Thank you, Mr Cavanough, for coming along today and giving us the benefit of your knowledge in this area. Your submission largely focuses on the compliance or the wage theft part of the legislation, and you state in the first of your key findings:

The Bill's wage theft provisions are unlikely to lead to a considerable decline in wage theft.

Please explain to us why you've come to that conclusion.

**Mr Cavanough:** Wage theft is a really complicated problem with a whole range of determinants. We've been looking at this issue at the institute for a few years now and, I think, have developed quite a bit of experience in it, particularly recently. Most recently, we produced a report called *Blue harvest*, which saw me go up into the horticulture area at Coffs Harbour and spend quite a bit of time speaking with wage theft—

**Senator FARRELL:** Did you just say you went up there?

**Mr Cavanough:** I did, as the lead researcher. I spent quite a bit of time up there speaking to individuals from all different backgrounds, including Australians but also foreign nationals working here, who were experiencing quite extraordinary cases of underpayment and exploitation. Many of these cases were the result not just of a lack of deterrent but of loopholes within various systems, including things like labour hire licensing. There were issues around the 88-day Working Holiday Maker program, for example, which oriented a lot of these workers into an area for a small amount of time where, even when they were getting underpaid, they could kind of see the light at the end of the tunnel and tolerated that for several weeks until that was concluded.

My basic contention with the wage theft provisions in this bill is not necessarily that they're poorly intended or anything like that, but that simply adding criminal punishments isn't going to deter all cases of wage theft. I think there are some problems around the fact that the criminal deterrents in this bill are weaker than what we've already seen legislated in Victoria and Queensland, and the reason we saw that legislation in Victoria and Queensland is that there was effectively no action from the federal government on this issue for several years regarding criminalisation. What we're seeing in this piece of legislation is a criminal sanction that, in being weaker than what we've already seen in Queensland and Victoria, for example, sends the wrong signal. I think that is a step backwards instead of a step forwards on this problem.

**Senator FARRELL:** Will this federal legislation—using the cover-the-field concept—actually override the Victorian and the Queensland legislation?

**Mr Cavanough:** My understanding is that that is the case. One of my concerns is that, once we have the federal legislation—which I think we need; we need a criminal deterrent in the federal legislation—it will effectively mean that other states won't also be able to issue their own stronger penalties as well. So my concern is that a weaker federal law will effectively override those state provisions that have been pretty strong.

**Senator FARRELL:** Your findings also cast doubt over the effectiveness of the provisions in the bill to prohibit job advertisements that advertise a sub-minimum wage. This is something the government was recently boasting about. What do you believe are the weaknesses in this legislation?

**Mr Cavanough:** The first point with that one is that I think the wording in the legislation is broadly well intended. I think there is a problem if advertisers are able to put a job ad on Seek and say, 'You're going to get \$10 an hour.' I'm glad that there's a step forward to making sure that that won't be allowed.

The problem with that particular provision is that it's just quite thin and it doesn't actually reflect the nature of the job advertisements that draw vulnerable workers into exploitable situations. Again I'll use the case study of the Coffs Harbour region, because that's some work that we've done. That's an area we've done a lot of work on, quite recently. The blueberry industry up there is prominent and they need a lot of labour very quickly during their harvest, particularly around September through October to November. What we see in the form of job advertisements drawing workers into that area is not really ads saying: 'You're going to get five dollars an hour.' That doesn't really happen. We see a problem with misleading advertisements which say: 'You are going to get \$1,000 a week or \$2,000 a week,' and then workers rock up and they're getting \$5 or \$10 an hour. These are completely misleading advertisements.

There's another aspect, though, with the job advertisement provisions. It's not usually the employer who's actually posting a lot of these ads. In many of these cases, you'll see workers who are employed by labour hire firms being asked by their employer to actually go and corral more labour, and these individuals, who aren't necessarily the employer, technically, are effectively posting what might be constituted under this legislation as illegal job advertisements. I've spoken to individuals who were effectively coerced or enticed into doing that type of work, which is lengthy and time-consuming, who weren't even being paid, and they were being promised incentives by the employer: 'You'll get a better job at the end of the day if you do this work for us.' So we've seen individuals who aren't actually employers, technically, posting what would be illegal job advertisements. The point with this, though, is that this is kind of reflective of the fact that I think this process has been a little bit rushed and a little bit—

**Senator FARRELL:** More than rushed.

**Mr Cavanough:** Yes, and these types of details would be reflected in some sort of standalone legislation addressing underpayment and wage theft. It's a really complicated issue. There are a whole range of determinants and a whole range of different aspects, particularly to this job advertisements problem, that I think would be better addressed in a more detailed piece of legislation specific to this issue of underpayment.

**Senator FARRELL:** And not this piece of legislation?

**Mr Cavanough:** Well, no. There are certain aspects that I'd agree with in schedule 5 of this legislation, sure, and, if there were a standalone piece of legislation on underpayment, it might well find its way in there, but, at the end of the day, it's relatively thin in addressing the core roots of this problem, and I think the job advertisements clause is a pretty clear illustration of that.

**Senator FARRELL:** You've mentioned a couple of times your own investigation in Coffs Harbour. I think that related to the blueberry industry. Am I right?

**Mr Cavanough:** It did, yes.

**Senator FARRELL:** Can you give some examples of the worst practices that you came across when you did your examination up there?

**Mr Cavanough:** These are extreme cases, but they speak, I think, to just how nefarious this small minority of actors can be in finding loopholes in systems to make a profit on the back of workers that are getting exploited, unfortunately. We saw cases of individuals getting paid, on average, \$3 an hour, working for weeks on end—10-hour days earning \$30 a day—and being completely manipulated around the piecework provisions. You'd have labour hire firms who would swoop in and they would meet the genuine needs of the farmers who really needed labour quickly but they would then effectively have a group of workers and shop them around from farm to farm and often go onto farms that had very low-yield crops, which made it impossible to meet the accurate piece rate. So you'd see workers out for 10 or 12 hours a day earning the equivalent of three to four hours pay. Almost universally in that harvest you would see workers being forced to have deductions from their pay for transport and accommodation, which is again almost universally substandard. One of the most egregious examples that I've seen—and frankly it was embarrassing walking round as an Australian citizen, having these foreign nationals in our country—was over 100 Pacific islanders, in a small town just north of Coffs Harbour, living in a shipping container village, in squalid conditions. Each shipping container had four individuals within it, and they were being charged the same price as the median rental price of a house in the same suburb. That type of behaviour isn't necessarily addressed in this legislation, and my worry is that, after passing this bill and saying that the job is done on wage theft, there are still going to be these loopholes that some of these individuals will use, and we'll see this sort of behaviour continuing.

**Senator FARRELL:** Can I ask you to focus on South Australia for a moment? We don't have any wage theft laws here, but in your submission you say up to one in five workers are subject to wage theft in South Australia. Can you explain a bit more about how you've come to that conclusion?

**Mr Cavanough:** That estimate is derived from a pretty extensive audit of literally every Fair Work Ombudsman audit campaign that has ever happened in Australia and looking at some of the rates of noncompliance in certain industries. When we look at those rates, we can apply that economy wide and make assessments about how bad the scale of the problem may be. Not all cases of underpayment are as egregious as those examples I stated before. Not all are these horrific attempts to exploit workers. There are cases where individuals make genuine mistakes. I think that needs to be reflected in this legislation as well. The problem is that there is this huge issue of underpayment, both intentional and unintentional, that is just not really addressed in this legislation. It's not just me saying this; there are key business groups and others who are effectively arguing

that this bill alone won't stop this problem of both intentional underpayment and unintentional underpayment. That's because we're not addressing the root causes and the determinants.

**Senator FARRELL:** Still focusing on South Australia, you say in your submission that the bill will have a disproportionate impact on the economic trajectory in South Australia. Can you expand on that a little bit?

**Mr Cavanough:** I echo some of the sentiments around casualisation from the previous testimony. My assessment of the bill is that it does make it relatively straightforward for employers to employ new workers as casuals. The point isn't that all casual work is bad or anything like that; it's just that we do have a really high rate of casualisation here in South Australia. We also have the second lowest medium wages here in South Australia. We're typically a higher-unemployment and lower-wage state than others, and I think that's a problem. In my assessment, I don't think the aspiration of the government of the day should be pursuing strategies simply to get more people into casual forms of employment. I think South Australia would be better served if we made it easier for people to have more stability and more job security. In my submission I do come to the conclusion that I think that's not going to be the case. Again, the focus of my submission was primarily on schedule 5, and I'm happy to go into more detail on that particular schedule.

**Senator FARUQI:** Thanks for coming to present evidence today. Your submission also highlights the vulnerability of migrant workers to exploitation, including wage theft, so I was wondering if you could comment on how this bill would affect these workers. Will they become even more vulnerable?

**Mr Cavanough:** My assessment really is that it's, for so many reasons, going to be more or less a continuation of the status quo. Imposing a criminal sanction and strengthening some penalties around the intentional underpayment are broadly positive but don't address the determinants of why migrant workers are vulnerable to underpayment and exploitation. We know what these are because we've been talking about them for years. The government even made some small actions on this back in 2017 with the protecting vulnerable workers act. That reflected the fact that working holiday-makers in Australia and obviously migrant workers and international students and other migrant communities are disproportionately vulnerable to underpayment for various obvious reasons. We have the 88-day working holiday-makers program regional work component, which effectively asks of all working holiday-makers to go out into the regions and work for 88 days. That system has clearly been demonstrated to expose workers to vulnerable situations.

The problem around international student visa work limitations—I know they've been adjusted during COVID but typically international students have only been able to work 20 hours per week legally. I think that's created systems—and we've seen that right here in the Adelaide CBD recently—where you have foreign nationals, international students typically, feeling like they don't have agency in the workplace and often fall victim to quite unscrupulous employers who offer wages with the condition that they're not going to do in the staff if they work beyond their allocated 20 hours. So there are some broader determinants that are basically creating expectations or situations where migrant workers and working holiday-makers are acutely vulnerable to exploitation. My broader point in the submission is just that this piece of legislation doesn't address that. It adds some tightening on the penalties, and that's okay, but we're still going to see folks who are willing to disregard the rules even with this legislation in place.

**Senator FARUQI:** You were suggesting earlier I heard that there should be a separate piece of legislation that actually addresses the issues of wage theft—is that accurate?

**Mr Cavanough:** I think that would be the ideal process on this. We've been discussing it for many years now; it hasn't just come to the government's attention. This whole process has been quite expedited, as mentioned earlier. There's been, for example, the criminal sanction around wage theft. That's an idea that's been floated for a long time, and it's interesting to me that it's been thrown into this broader piece of legislation, which is obviously a big complicated bill with enormous ramifications and it doesn't give the airtime for us to actually explore all of these issues around wage theft and underpayment. I think a standalone process on this would be beneficial if we're working towards a federal piece of legislation on wage theft specifically. That would be a preferential process, because then we could iron out a lot of these details with a bit more clarity, particularly around those job advertisements I mentioned before and making sure smaller businesses also don't come on the wrong side of any punishments that might be passed in any proposed legislation.

**Senator FARUQI:** As I understand it, this bill actually weakens provisions that require employers to ensure the circumstances and needs of different employees are taken into account when explaining EAs. For instance, it removes the reference to culturally and linguistically diverse workers, young workers and the like. Given your experience of migrant workers, how do you think this weakening might impact workers from culturally diverse backgrounds?

**Mr Cavanough:** I'd have to take on notice the specific elements of the bill you're addressing regarding the languages, but I have a broader point on those communities. Navigating the system is relatively complicated for foreign nationals working in the country who don't have English as a first language. For example, I've spoken with folks from East Asian communities who went to the Fair Work Ombudsman to try to chase pay. They found the language barrier difficult to navigate and effectively left that process to one side and moved on. I think we broadly need to be doing as much as we possibly can to support all communities that do have English as a second language. I'll take on notice the specifics of the legislation you're referring to, but we do need to think about that broader point.

**Senator FARUQI:** Thank you, Mr Cavanough.

**CHAIR:** You have touched on this, but I just want to clarify: does the bill increase the deterrents for underpayment and deliberate underpayment?

**Mr Cavanough:** It increases the deterrents to an extent, but not so much if you're in Queensland or Victoria because there are stronger criminal penalties that have been passed in Queensland and Victoria. Again, just addressing deterrent doesn't actually address the determinants of the problem entirely. I think it's an important part of the equation, but if you wanted to address the problem of underpayment more thoroughly we'd have to look beyond simply tightening some of these punishments and deterrents and actually address the root causes.

**CHAIR:** Are you able to guarantee that the wage theft provisions in those particular states are constitutionally valid?

**Mr Cavanough:** I'd have to take that on notice. I'm not a constitutional lawyer, but I do know that the bills that have been passed in both of those states do have stronger criminal penalties than are being proposed in this legislation.

**CHAIR:** Is it better to keep the current regime or increase the deterrents as proposed by the bill?

**Mr Cavanough:** Let's go back a step. The deterrents were expanded considerably in the 2017 legislation. The submission from the Western Australian Chamber of Commerce to this inquiry noted, for example, that only one individual has been prosecuted under those new regimes. So I don't think deterrents are enough specifically. This does slightly add to the deterrents, but there's the idea that we're walking back to an extent the criminal punishments have been floated in other states that have specifically gone through quite extensive processes on this issue and arrived at the decision that the criminal penalty should be up to 10 years in prison in some cases. This process clearly has not been as thorough in regards to underpayment. I do think it's a problem not aligning with some of these processes that have already been happening at a state level.

I note that the government has stressed previously that there needs to be greater collaboration between the states and the federal government on this issue, but in this process the Queensland government, which has gone through the process to criminalise wage theft, criminalise intentional underpayment, received two hours of consultation from the federal government on the issue. That's not the sort of process that's going to arrive at good public policy outcomes on this enormous problem. Yes, there's a slight increase of the deterrents on a federal level, particularly in a state like South Australia, which has completely not pursued any legislation on this issue whatsoever. It's just not enough address to the determinants and it's out of step with some of the stronger regimes we have seen put forward in Victoria and Queensland.

**CHAIR:** What do you understand by the concept of underemployment?

**Mr Cavanough:** Obviously people want to work—

*Senator Farrell interjecting—*

**CHAIR:** I'm asking the witness, Senator Farrell.

**Senator FARRELL:** Yes, I know. Seriously? 'Underemployment' means—

**CHAIR:** If you want to give evidence, Senator Farrell, you are more than welcome to put a submission in.

*Senator O'Neill interjecting—*

**Senator FARRELL:** Inane questions just filling up the time—

**CHAIR:** I'm not filling up the time. I have some detailed questions that follow on from this, but I want to understand from the witness what their understanding is of the concept of underemployment.

**Mr Cavanough:** I think it's individuals who would like to work more hours than they currently do.

**CHAIR:** Do you know what the level of underemployment in Australia is at the moment?

**Mr Cavanough:** I'm not familiar with the specific figure—probably 15 per cent or something like that.

**CHAIR:** Would that suggest to you that part-time employees want to work additional hours and that the hours they are given are less than the hours they would want to work?

**Mr Cavanough:** I'm not exactly sure how the line of questioning is specific to my submission. Could you repeat that question?

**CHAIR:** You said you thought it might be about 15 per cent. Does that suggest that part-time employees want to work additional hours?

**Mr Cavanough:** Some part-time employees may and some may not.

**CHAIR:** If a part-time employee can get an additional shift and can get paid overtime at, for example, time and a half for the first two hours and double time thereafter, or give the extra shift to a casual, what do you think would be the typical decision made by that employer?

**Mr Cavanough:** My submission primarily focused on the impacts of the bill more broadly on South Australia but also on schedule 5.

**CHAIR:** Do you want to take it on notice?

**Mr Cavanough:** Yes, I will take it on notice.

**CHAIR:** If an employer can roster a part-time employee with the agreement to work the extra shift at their normal hourly rate or roster a casual at 125 per cent, do you think that part-time employee is more likely to be asked whether they wish to work the extra shift?

**Senator O'NEILL:** The submission wasn't about the part-time conditions?

**Mr Cavanough:** I will take that on notice as well.

**CHAIR:** I didn't provide editorial on Labor Party questions, so I would hope that the courtesy that I have given to Labor Party senators would also be returned to government senators on this committee.

**Senator FARRELL:** You are not giving any courtesy to the workers by introducing this legislation, Chair.

**CHAIR:** Thank you, Senator Farrell, for that editorial. I did not interrupt your questioning, and I would appreciate it if you did not interrupt the questioning of government senators. In relation to the position that I put to you, I put it to you that it is the case that part-time employees will get more hours, ending up with there being less underemployment. That would be a good thing, wouldn't it?

**Mr Cavanough:** Less underemployment as a statement of fact would be a good thing. Again, it doesn't address schedule 5, and I came here primarily to address the problems that I saw around workers continually getting exploited. We had a case this week right around the corner—within 200 metres of this building—of a young woman getting punched in the face for asking about her pay. And just yesterday the employer admitted on a YouTube video and in a new article today that he was indeed paying her \$10 an hour. My testimony has primarily been around schedule 5, because I don't think it addresses issues like that. Obviously, if we could decrease underemployment, that would be a good thing as well.

**CHAIR:** That would help the economic recovery?

**Mr Cavanough:** I think underemployment is a problem.

**CHAIR:** But less underemployment, though, would be a good thing and help the economic recovery?

**Mr Cavanough:** I think that's a statement of fact.

**CHAIR:** Okay; so that's a statement of fact. Going back to the state laws that dealt with wage theft, what would happen if they are held to be inconsistent with the federal act and therefore invalid?

**Mr Cavanough:** That's a really good point, and this is why we need collaboration between all of the states and the federal government on this issue, instead of coming to the table at sort of a minute to midnight with these provisions around wage theft. The Commonwealth has known about these issues for years, primarily because of its own work. The Migrant Workers' Taskforce, chaired by Allan Fels—a very esteemed and respected individual—that identified that half of all migrant workers in the country were routinely underpaid. That's the government's own commissioned work.

So the idea that there hasn't been this collaboration between the states and the Commonwealth that we would have liked to see is problematic. If there are inconsistencies between those, I think that speaks to a pretty poor process and an unwillingness, frankly, of the federal government to come to the table seriously on this issue. There are continual statements. When we see reports released that show people getting \$3 an hour and we see senior government ministers step forward and say that this is a disgrace and that they are outraged and



embarrassed by it, and the next step is legislation that only scrapes the surface and may cause inconsistencies with some of the state laws, as you said—if that is the case—I think that is a real shame and it reflects a poor process.

**CHAIR:** But you would accept that there are benefits in the bill?

**Mr Cavanough:** Sure. There are individual benefits. The idea of increasing deterrence for sham contracting, for example, is a step forward. It doesn't address the root determinants that I suggested. It is not that complicated to come forward with a bill and just look at previous deterrence and make them slightly stronger and say, 'Is this making the situation better?'

It's making it a tiny bit better, but it's not addressing these root causes and I don't think it's creating the deterrence that we need.

**Senator O'NEILL:** Your evidence today and the evidence we're receiving is in a very contracted inquiry that we're doing. There are only three days, and you're only speaking to us for half an hour, so it's very short. There are two South Australian senators, Senator Patrick and Senator Griff, who are going to have a very big impact on what the Senate decides to do with this. There is also Ms Rebekha Sharkie, in the House of Representatives, who can stand up for the people of South Australia. We've got three others, representing the states of Tasmania and Queensland. What's your recommendation to senators and independent members—and, indeed, if the government would listen—with regard to this legislation? Should it be rejected? Can it be amended? What should the government do with this piece of legislation?

**CHAIR:** I'd encourage you to take it on notice, because it's 10 am and I need to move on to SA Unions.

**Senator WALSH:** Chair, that's a con!

**Senator O'NEILL:** That wasn't funny. He doesn't want to hear it at all.

**CHAIR:** I want to hear from SA Unions and we have a schedule, so if you could take that answer on notice, that would be very good.

**Senator O'NEILL:** You're silencing the witness—

**CHAIR:** No-one is silencing any witnesses, Senator O'Neill. This inquiry is all about hearing from witnesses and their submissions to the inquiry. No witnesses are being silenced. If they wish to add to their answers, they can certainly respond to the questions on notice.

**STORY, Mr Angas, Secretary, SA Unions**

[10:01]

**CHAIR:** Welcome. Do you have an opening statement?

**Mr Story:** I don't. I have a few quick comments I could make.

**CHAIR:** If they're quick and short it will make my life a lot easier, which I'm sure you care about! If you could make those opening comments we'll proceed to questions as soon as you're finished.

**Mr Story:** Thank you, Chair. SA Unions has made a submission to this inquiry. We are the peak body representing 160,000 workers across all industries in the state and the South Australian branch of the Australian Council of Trade Unions. Our submission doesn't seek to replicate the submissions made by the ACTU, although we do concur with those submissions and adopt the conclusions and recommendations that they are making.

Our submission is intended to point to six areas where we think, in terms of South Australia, there are issues with this legislation. Very quickly, they are: the allowance of agreements that don't meet the better off overall test; rolling back wage theft penalties in other states that have that legislation, Victoria, Queensland and the ACT; allowing workers to be classed as casuals when they have ongoing regular work; giving employers the capacity to ask workers covered by 12 awards to perform work at different locations, with no oversight from the Fair Work Commission; we're concerned about the stripping of overtime payments from part-time workers; and we're concerned about the doubling of the length of greenfield agreements. Those are our principal concerns. But our submission is mainly intended to reiterate some points that are peculiar to South Australia.

Those points are: we are a state with a higher level of labour underutilisation and unemployment; we are a state that generally has a lower level of average income than other states; and we're a state that is, particularly, a small-business state. It's a factor of markets that much of the head offices and larger expansions of business have tended to follow the markets towards the eastern states. We are a small-business state. The combination of higher unemployment and labour utilisation, lower wages and the small-business nature of this state lead us to have concerns. The principal concern is that this is not legislation which will create more better-paid, stable jobs. It will do the opposite. That simply means that wages will remain depressed or suppressed in this state. There will not be the levels of economic activity which small business in particular need to thrive. So, as we've said in our submission, we urge the Senate to reject or severely amend the bill.

**CHAIR:** Thank you.

**Senator FARRELL:** Thank you for coming along and giving us the benefit of your vast experience in this area, going back to the Public Service Association, if I'm not mistaken.

**Mr Story:** Yes, indeed—41 years now.

**CHAIR:** I need to take a break. Senator O'Sullivan is acting chair.

**Senator FARRELL:** Please excuse the chair. He did say that he was very keen to hear your evidence when he cut short the evidence of the previous witness.

**Mr Story:** I daresay he'll read the *Hansard*.

**Senator FARRELL:** I wonder if you can expand on some of these areas where you've indicated that South Australia is in a more difficult situation than the other states. Can you perhaps give us some examples? I know what you mean about head offices. Most of them have moved interstate. So we've got a very strong area in the small business area. Can you expand upon some of the problems that that creates for the state?

**Mr Story:** The problem for small businesses has always been that they are essentially in competition with one another and also in competition with larger businesses. When the economy is vulnerable and in a weakened state, those essentially weaker parts of the employment group, the small businesses, are affected more. It's a bit of a paradox that every small business would like to reduce its own costs, and it often sees labour costs as the first thing it wants to reduce, but if the people who are employed in small business don't have wages to spend in small businesses, all small businesses are worse off. That's our overriding concern.

It is in the interests of small business in this state to see wages rising. We've had depressed wages prior to the pandemic, but it's very difficult now, and that impacts on spending power. I don't think it's any secret that this is likely to be a more difficult problem when JobKeeper ends in March—again, a further depression on the capacity of casual workers, low paid workers and those who are unemployed to spend. The impact there is on small business.

**Senator FARRELL:** If I understand what you're saying, prior to the pandemic South Australia already had a lower average income. The pandemic has made this worse. Is it your evidence that this legislation will exacerbate that to an even greater extent?

**Mr Story:** Yes, it is. There are some charts on page 6 of our submission which show the South Australian unemployment rate consistently tracking higher than the national rate. That's been the case for all of the last decade. South Australia's underemployment figures have also been higher than those nationally, and that's a trend that's been consistent for the last decade. There's certainly nothing in this legislation that's going to turn that around. It's an economy that's struggled a bit and if the situation becomes worse it will struggle more.

**Senator WALSH:** Thank you for being here. You talked in your opening statement about your concerns around changes to the BOO test first off. Can you talk us through what your concerns about the BOO test and the potential cuts to workers' pay through that measure?

**Mr Story:** Yes. Our view about agreements has always been that, really, we have now an award and legislated safety net provisions under the National Employment Standards. The whole purpose, from our point of view, of workers entering into agreements is to lift people above that safety net standard of award provisions and the national standard. So our view is that workers want to negotiate arrangements that will improve their lot in life and agreements should do that. The purpose of an agreement should not be to take people below award provisions. It shouldn't be to take people to the situation where they aren't better off as a result of enterprise bargaining arrangements. We will defend that position to the end. In our view, there is no place for an agreements that do not advance the provision of employees. If you can't reach an agreement to improve your lot; well, that is one thing. But if there is an agreement reached then it should take people forward, not backwards.

**Senator WALSH:** The suspension of the BOOT test proposed in the bill, as you have said, would allow employers to make agreements that go below the award overall. Do you think it would in South Australia in your experience actually be larger employers who would access those provisions? How would that then impact the competitive situation of small business in South Australia?

**Mr Story:** We have seen that really it is larger businesses with HR departments, negotiators and lawyers who do enter into these enterprise agreements, often state-wide. Small business has been very disinclined to use enterprise agreements. I think they find it difficult. They sometimes lack the skills to do that. As a consequence, there is a higher proportion of small business directly reliant on just award arrangements rather than those agreements. The short answer to your question is I think that would continue. There is nothing here that would suggest to me there would be some change. I would be suggesting that in fact it would be larger employers who would seek to take advantage of their market position to drive conditions, in this case, below the standards that currently apply.

**Senator WALSH:** So would you say that, in effect, this bill could actually create a competitive race to the bottom of pay and conditions that businesses feel they have to engage in, in South Australia?

**Mr Story:** It certainly makes it easier to do that. The economic circumstances are such now that, for the next couple of years, there will be that tendency to try and drive employment conditions and wages down. I think this is just feeds into the wrong sort of cycle. The truth is: we need to lift everyone's wages to create the sort of economic vibrancy that will make this state go ahead and indeed Australia. It is not me saying that; it is something that Reserve Bank governor has been banging on a lot about for the last six or seven years—try and lift wages.

**Senator WALSH:** We have heard from you and other experts today that there is really nothing in this bill to increase wages or increase job security and that in fact wages have been frozen for a long time and we have a crisis of insecure work in this country. Can you tell us why it is important for working people to have a level of job security just in the context of their own lives in your experience.

**Mr Story:** I am always drawn in discussions with casual workers just about how such small everyday things that I take for granted are almost impossible for them. There is nothing more telling than their inability to get home loans because they can't guarantee a secure form of income into the future. One of the most fundamental aspirations of Australians is to own their own home is largely beyond the reach of casual employees. I am fearful that that this legislation simply continues that trend and exacerbates the capacity to employ people casually rather than on secure employment.

**Senator O'NEILL:** If I could ask your view about the SA Business Chamber of Commerce and industry submission, the government is making a lot of noise about how this, especially scheduled 2, will be a temporary measure and will only affect 12 modern awards and they are named in the act. But the South Australian business chamber has already indicated that there are a further 11 awards that they want the government to put in. Indeed,

they say 'as such, this may not be an exhaustive list of the affected industries,' and they want the bill to be included to amended to include additional awards which would better reflect the economic distress felt in South Australia. Is the government to be trusted in saying that this will be temporary and only for 12 awards or is there something else going on here?

**Mr Story:** My understanding is that the minister is able to add to the list of exemptions of industries. If I'm not right about that, I will stand corrected. But I don't think it is surprising that business SA are already starting to develop a wish list of areas they want given special treatment, and I think the pressure will continue for more and more to try and get out of the obligations they currently have.

**Senator O'NEILL:** What is your recommendation about this legislation to the crossbench senators—Senator Patrick, Senator Griff and Ms Sharkie, if it should ever get over to the House?

**Mr Story:** To all senators, our friends on the government benches as well: we think this is a rushed legislation and the crossbenches should vote it down. If bits are to be saved then there is a need for some severe amendments to it, and we would urge them to amend it if they are not prepared to vote it down.

**Senator FARUQI:** Thank you for coming in today to provide evidence. Throughout this inquiry and also through the submissions we have heard some pretty devastating salaries about from workers about the stress and anxiety that they experience already as a result of precarious employment and the stress of trying to assert their workplace rates in the face of often resistance from employers. In your view, do you think this bill will further increase the stress and anxiety for workers?

**Mr Story:** Anything that puts unrepresented workers in a position where they have to renegotiate their employment conditions creates some stress or uncertainty. It is the outcome of that process that really creates the stress; that's if they are process to accept worse wages and conditions. As I have already mentioned, it is my belief that, economically, that makes no sense and it's certainly a terrible thing for precariously employed workers, to find themselves again and again having to renegotiate enough money to get by.

**Senator FARUQI:** In the second reading speech, the Attorney-General said that this bill addresses known problems in the industrial relations system. As far as I have heard the evidence, it actually doesn't. It makes things worse. Do you think this bill actually addresses the industrial relation system problems that you think need to be addressed?

**Mr Story:** I think the answer has got to be no. It does mention one of the things which we think, here in South Australia, is an endemic problem, and that is the problem of wage theft, as we have no legislation controlling it. There's a state parliamentary committee looking into that now. They've published an interim report, which says that wage theft in South Australia is a half a billion dollars a year industry. That's a terrible problem that needs to be addressed.

I can only concur with the thoughts of the McKell Institute, who've got a lot of experience in this, that a separate bill ought to be introduced to deal with that in conjunction with the regimes that have been set up in other states. It should be worked through and best practice should be arrived at. It should not be a piece of legislation going forward now that will essentially undercut the regimes in a couple of other states. That, in our view, is not the way forward and is not the way to address a major problem in South Australia. Without rambling on too much, in the end there's a huge resourcing issue about compliance and the ability to track down people who were engaged in the wage theft. It's one thing to have laws. It's another thing to enforce them and to really make sure that there's bite in whatever the government is doing. That's a separate argument for another day.

**Senator FARUQI:** We've heard again and again—and I agree with this view that we've heard from experts—that this bill is actually going to reduce wages. It will be worse off for the economy. It will be worse off for workers. I, for one, cannot understand any logic in this bill other than government capitulating to big business. In your view, why do you think this is happening at this time, which is probably the worst time to bring legislation like this up? Do you have a view of that?

**Mr Story:** I think it was fair for the government to invite all industrial parties to embark on a process of seeing if they could find ways forward with industrial relations that would assist the economy to rekindle after the pandemic. To that extent, I think that was a good process. I think the legislation that has come out of it is weighed towards the wishes of certain parts of the business community. It certainly doesn't reflect what came out of a lot of those working parties. I do think it's heavily weighed one way, and I do think that there's not anything for workers in this legislation.

**Senator FARUQI:** Was your organisation involved in that working group process?

**Mr Story:** SA Unions is on the executive of the Australian Council of Trade Unions, but I personally wasn't involved. Certainly the Council of Trade Unions and many of my colleagues were, but I have only second hand reports on that.

**Senator FARUQI:** Thank you.

**CHAIR:** Mr Story, do you accept that there are benefits for employees in the reforms contained in the bill?

**Mr Story:** I think there are two areas where, in South Australia, there would be some advantage. One is in the concept of having legislation on wage theft, as legislation doesn't exist in this state. I've been critical of what that amounts to, because it is better in other states, and I would prefer, like Mr Cavanaugh from the McKell Institute, to see separate legislation done on that, but that is something that is a step forward. In principle, I look at the idea of cementing a way in which you can convert from casual to permanent as a measure that is in dire need of being addressed. My concerns about it are really that in the end there is a right to request a conversion, and on the employer's part there's a right, if there are reasonable grounds, to refuse it. I'm not sure that it carries us forward much, and there's no form of arbitration in that, other than by consent. In a way, if everyone's chummy, things can change. If they're not, there's no real route forward. I think those are the areas that are important for working people: getting more job security and addressing wage theft. I think they warrant further activity, further cooperation by everyone, to try to move forward on those. But I don't think this legislation does that in the end.

**CHAIR:** Do you support enterprise bargaining?

**Mr Story:** I'm not sure we've got a fixed point on it. I think we've become concerned about enterprise bargaining being a bit of a province of larger businesses and something that has become a bit alien to the rest of the workforce and the small to medium-size businesses. There was originally a strong uptake. It's tapered off over the years, and I think from the point of view of many of the affiliates of SA Unions it is an extraordinarily time-consuming exercise to have to negotiate on a one-by-one, workshop-by-workshop basis the employment conditions of union members. In many industries there are thousands of employers, and for limited-resource employee organisations it means a huge logistical effort. We've looked at trying to find ways of bargaining that allow us to bargain across industries in ways that do manage to get more flexible arrangements involving groups of employers, rather than on a one-by-one basis. So, we have mixed feelings about enterprise bargaining.

**CHAIR:** Would you accept that enterprise bargaining is a key driver of productivity and wage growth?

**Mr Story:** I think our initial support for the concept of bargaining was premised on that thinking. Our view was that you had national employment standards and an award safety net, and beyond that the opportunity for working people to have improvements to their employment conditions—more flexible arrangements and all the rest of it—done through bargaining at a local level. But in our mind, we want to see people materially better off. We don't want the bargaining process to be something that takes people below those safety nets that are so important. So, I think it's a matter of emphasis from where we sit in those negotiations. We don't want to see people put into a bargaining process that makes them worse off.

**CHAIR:** There are state wage-theft penalties in some states, but not in South Australia. You may not be in a position to comment. Are you able to guarantee that those are constitutional and actually effective in practice?

**Mr Story:** Again, like Mr Cavanaugh, I'd have to say that I'm not an expert on those constitutional issues. Perhaps, if you're happy with this, we'll give it some consideration and respond to the committee in writing.

**CHAIR:** It's 10:30, and I'm just looking at Senator O'Neill, who normally jumps in at this point with one final question!

**Senator O'NEILL:** I may; that sounded like an invitation!

**CHAIR:** I knew this was going to happen anyway. One final question, Senator O'Neill, and that will conclude your evidence.

**Senator O'NEILL:** Thank you. In your evidence this morning you have indicated that, for such a large piece of legislation, which is described as an omnibus bill—most Australians don't understand, but it's a whack of legislation—there's been a lot of consultation, supposedly, but we've ended up with a bill about which—even though Senator McGrath has engaged you—you only give a couple of points where you think there could be very mild improvements. Overall, does this legislation offer hope to wage growth and job security to Australians, or is a threat? Should it be rejected?

**CHAIR:** You're welcome to put your answer on notice, Mr Story.

**Senator O'NEILL:** Answer the question, Mr Story. It's pretty easy.

**CHAIR:** I thank you for coming along today.

**Mr Story:** Thank you, Chair. Of course it's a threat, Senator.

**CHAIR:** Thank you, Mr Story, for coming along today.

**BAUER, Mr Peter, State Secretary, Australian Manufacturing Workers Union**

**DE PLEDGE, Mr Barry, Delegate, Australian Manufacturing Workers Union**

[10:31]

**CHAIR:** I now welcome representatives from the Australian Manufacturing Workers Union. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. In relation to an opening statement, do you have one?

**Mr Bauer:** Yes, I do.

**CHAIR:** How long is it?

**Mr Bauer:** Not very long.

**CHAIR:** They always say that! Just one opening statement, and it'll be nice and short?

**Mr Bauer:** It will be nice and short.

**CHAIR:** At the conclusion of your statement, we'll hand over to one of my Labor colleagues.

**Mr Bauer:** At the peak of the global pandemic in Australia we were told that we were all in this together and that we needed to pull together as a community to carry us through that pandemic. I believe, from an AMWU perspective, we did our share of that. Now, as we slowly turn the corner and economic recovery is in focus, we are being told that financial recovery is done with sweeping industrial relations reforms and laws that we believe will leave us worse off. We say you can't heal the economy by hurting workers. The only way, we believe, you can recover from this pandemic is for all of us to work together and to put workers at the centre of the economic recovery.

The AMWU, the Australian Manufacturing Workers Union, represents over 70,000 manufacturing workers. Manufacturing workers kept food in supermarket shelves through our food membership; were pivotal in producing PPE for hospitals and the community through the work that they did in a company called Detmold here in Adelaide; and helped at the height of the COVID crisis with handling the pandemic as it was. Our submission, which you've received, outlines our objection to the bills and shows how manufacturing workers will be worse off under the proposed changes. The AMWU believes the current bargaining system is failing workers and must be reformed through the lens of improving the capacity for workers to bargain for better wages and conditions in their workplaces across all industries.

The bill only makes the problem worse, in our view. The proposals for casual workers, bargaining, greenfield agreements and wage theft will compound the existing problems, leaving workers with even less support for what we believe is already a broken system. The bill puts more power in the hands of the employers and would lead us to another decade of no wage growth and insecure work and losses to conditions. There is nothing in this bill that addresses the current power imbalance between workers and employers which has been allowed to develop under the present industrial relations laws and a series of one-sided industrial relations reforms.

Right now we have workers who are suffering as a result of broken bargaining. Barry will attest to this through the statement that he's about to make as a roadside patrol mechanic with over 40 years at the RAA. He's potentially going to be left worse off under the bargaining arrangements he's currently going through. He will speak briefly about the personal toll that prolonged bargaining tactics have had on him and how he'll be worse off under the proposed changes. If it pleases the senators, I'll hand you over to Barry.

**CHAIR:** I was hoping to have only one statement because otherwise we have all the statements being read out and that limits the time for questions. We can get your statement tabled and distributed to members of the committee. That would be my preference so I can go straight to questions from the Labor Party senators.

**Mr Bauer:** I'm happy to do that, but Barry's statement is very short. It won't take very long to go through it. It just gives a flavour of what's happening in relation to the current negotiations.

**CHAIR:** As long as the Labor Party senators are aware that this shortens their time for questions.

**Senator PRATT:** I'd like to hear it.

**Mr De Pledge:** I'm one of 93 roadside patrol workers at the RAA and, at the moment, we're going through what has been a very long, arduous process over the last couple of years. My employer is promoting cuts to conditions. As a patrol, we do a good job out there, and we're just looking to make sure that the rules and regulations around the Fair Work Act actually help workers bargain for a fair and decent deal. We make many sacrifices. In the past we've been valued, but now it appears that the RAA feels emboldened to apply for termination of our agreement, which would undercut 20-plus years of enterprise bargaining. Termination, or the

ability for businesses to apply for termination, should be the absolute last resort. It should be only for when a business is going broke or when the current enterprise agreement is out of date. That's basically all I have to say.

**Senator FARRELL:** Thank you, Mr Bauer and Mr De Pledge, for coming along and giving us your evidence today. Mr Bauer, is it fair to summarise your evidence by saying this legislation is a kick in the guts to your members for all of the hard work that they've put in during the pandemic?

**Mr Bauer:** Yes, I think that's a fair summary. Our members worked very hard to get through the pandemic. A lot of flexibility was entered into, which in the past we would not have entertained, but we did so on the basis that it provided an opportunity for our members, even though they were working long hours on strange sorts of shifts, to contribute towards the pandemic recovery.

**Senator FARRELL:** Your unions have a long history of protecting workers in this state and improving wages and conditions for people in the manufacturing sector, particularly in the defence area. How do you see these new greenfield enterprise agreement provisions undermining your ability to continue to do that?

**Mr Bauer:** I must say I am very concerned about the legislation around the greenfield agreement. We are in the situation where we're developing a massive new industry in South Australia around shipbuilding and the building of the new generation submarines. We are currently talking to Naval Group about what's going to underpin the wages and conditions of our members who are going to be working on those projects. At this stage we have not entered into any formal negotiations, but should Naval Group formally commence those negotiations, we will be in a position, if this legislation were to go through, where we could be forced into an eight-year agreement, which would put our members in a situation where they would have to work for eight years without having a say on their terms and conditions. The problematic part of that is that, once you enter into an enterprise bargaining situation, you need to know from your members exactly what they're doing and what terms and conditions they need on the job. Things such as classifications, the skills they're using and the conditions they're facing on the job are normally something you'd negotiate in an enterprise agreement, and if they're stuck in an agreement for eight years they get no say in any of those things. They could be working in situations where their skills are completely incompatible with the classifications that are in the agreement, their conditions are incompatible with what they experience on the job and they have to wait eight years before they can do anything about that. It's completely unrealistic and unreasonable.

**Senator FARRELL:** Could these workers, under this new legislation, go for eight years without a wage rise?

**Mr Bauer:** That could be an unfortunate outcome of the process as well. Yes, we are very concerned about that.

**Senator FARRELL:** Yes. In the old days, manufacturing was an employer of permanent staff; people were mostly full time. That's changed over time. Can you tell us a bit about how casualisation affects your members, and, particularly, how that situation is going to be made worse by this legislation?

**Mr Bauer:** I think, in relation to the current situation, most of the awards that our members work under have a provision that allows for people to nominate for permanency—to make a request that can't be denied unreasonably to become permanent after six months as a casual employee. We believe that this legislation makes that worse for our members. We surveyed our members and we understand that most of our members who are casual workers are looking for permanency. They are not choosing to be a casual employee; they're looking for a job on a permanent basis so they can pay their bills and have surety in their income. We believe this legislation makes it even worse.

**Senator FARRELL:** Can you give us some examples, or Mr De Pledge might like to give us some examples, of the psychological impact of casual work on workers, and some of the barriers that are put up against workers so they're forced into casual work. This

**Mr Bauer:** I can only talk about the experiences of a number of employers—some of the major food-manufacturing employers and also some of the mineral testing employers, who have prolific numbers of casual workers, and those casual workers are constantly approaching us about how they become permanent. They suffer psychologically in lots of cases because of the lack of security they have in the day-to-day paying of bills and their economic situation. We try to assist where we can, but, in most of the cases where we try to assist them, the employer then moves those workers on and brings in some new workers, so it becomes a very difficult situation. And lots of casual workers are very reluctant to make too much noise about becoming permanent on the basis that they feel that they will then be targeted for being let go. So it becomes very much a psychological barrier for workers, and it's a problem for workers to speak up about. At least the current legislation, in relation to the awards, allows workers to make a formal approach and it puts the obligation on the employer to consider that. What we don't want is for that situation to worsen or to make casualisation even worse out there.



**Senator FARRELL:** Mr De Pledge, did you want to add anything to that from your experience?

**Mr De Pledge:** I haven't had a lot of experience with casualisation, other than through family members. But what I see from this legislation is that it wouldn't improve the situation overall. There needs to be more permanency added to workers after a period time to ensure that they can get permanent hours.

**Mr Bauer:** Can I give you an example, Senator?

**Senator FARRELL:** Sure.

**Mr Bauer:** We had a situation where we had a tea manufacturer in this state who had casual workers—

**Senator FARRELL:** What sort of manufacturing?

**Mr Bauer:** They were making tea.

**Senator FARRELL:** Tea?

**Mr Bauer:** Yes.

**Senator FARRELL:** We make tea in South Australia?

**Mr Bauer:** Yes, they were. We approached the workers there. They had some workers there who had had up to 13 years of casual employment, and most of them were around the five-to-10-year mark. We as a group got the workers to sign a petition and approach the employer, saying, 'We want these employees to nominate for permanency.' The employer refused, just on the basis that he didn't believe that he could operate under the shift arrangements—because, obviously, when you become permanent, you have a fixed set of hours. We didn't think that was reasonable, because it had been clearly demonstrated that those people could work under a fixed set of hours. They'd been working under fixed hours for a long time anyway. We took that matter to the commission but we were unable to convince the commission that these people should be permanent, on the basis that the company folded while we were going through that argument.

There is a prolific amount of casual work out there. People are on long-term casual employment and it really needs to be addressed.

**Senator FARUQI:** Thank you so much to you and your members who have been on the frontline of the pandemic for some time now. I'm interested in what you're able to share about the priority issues raised during the working group process. I understand that AMWU was involved in the greenfield agreement working group. I'd just like to know what priorities did you raise, and are any of those actually reflected in the bill?

**Mr Bauer:** I'll have to take that question on notice. I wasn't involved personally in the group working process and, at the end of the day, I'm not aware of the specific position that was put or the outcomes that were achieved out of that. It doesn't appear as if the collaboration that we were seeking in the end outcomes were what we were expecting.

**Senator FARUQI:** It would be great if you could take that on notice, and also what the industry groups raised and if any of those priorities made it into the bill.

**Mr Bauer:** Sure.

**Senator FARUQI:** I especially want to thank Mr De Pledge for sharing his personal story. We have heard that story throughout this inquiry. We've seen in submissions how stressed and anxious workers are from their experiences of precarious employment especially and also from the stress of trying to assert their workplace rights, sometimes in the face of resistance from employers. I'd just like to know from you, do you think this bill will increase your members' stress and anxiety in terms of their employment and work?

**Mr De Pledge:** Thank you for the question. Yes, I do, because the proposed changes to the BOOT are a weakening of what is just a very basic safety net. I'm sure that when the BOOT was first thought of that it was seen as the low mark, not the high mark. Instead of this bill before parliament talking about strengthening the BOOT test and improving outcomes for workers in general, it's talking about making modifications to it that in the long term will have the unintended consequence of removing the basic protections that are there.

**Senator O'NEILL:** Like what? What are the protections that are at risk?

**CHAIR:** Senator O'Neill, Senator Faruqi has the call.

**Senator FARUQI:** In the Attorney-General's second reading speech on this bill he said that it addresses '... known problems in the industrial relations system'. We've heard from you that in South Australia especially, where there are no penalties for wage theft, it might be a slight improvement, but it doesn't really go to the core of the wage-theft issue. Are there other industrial relations issues that you think this bill addresses? From my perspective, it actually exacerbates issues for workers, rather than addressing them.

**Mr Bauer:** Yes, Senator, I agree with you in relation to your conclusion. Whilst there are a couple of benefits that come out of the legislation, in the main, most of the changes are detrimental to workers, particularly casual workers and workers who are in bargaining processes. Overall I don't think that the bill does much to improve the benefits for workers at all.

**Senator FARUQI:** Thank you.

**CHAIR:** If the greenfield changes help to attract one new project to South Australia, wouldn't that attract new jobs to South Australia?

**Mr Bauer:** I think South Australia will attract jobs in any event. We are a great place to begin manufacturing. We've got the skills, the infrastructure and the ability to attract jobs in any event. I think all the greenfields agreements legislation will do is disadvantage workers in relation to their ability to negotiate a proper agreement in which they get a say in their terms and conditions.

**CHAIR:** But doesn't the bill require wage increases every year of the agreement, for an agreement over four years?

**Mr Bauer:** The outcomes of those negotiations are not being determined by the employees themselves. The employees that get undertaken, or get roped into those arrangements, will have to wait eight years before they get a say in what their wages are.

**CHAIR:** But currently there's no requirement for any wage increases for existing agreements. Isn't that correct?

**Senator WALSH:** [inaudible] one per cent—

**CHAIR:** Senator Walsh, I have not interrupted Labor senators—

**Senator FARRELL:** Yes, you have.

**Senator O'NEILL:** Especially me, Chair!

**CHAIR:** Senator O'Neill is always interrupting me. I'm just interrupting Senator O'Neill's interruptions of me.

**Senator O'NEILL:** We've been around this roundabout before, Chair.

**CHAIR:** We have, Senator O'Neill, thank you very much. If you could respond to the question please in terms of currently there is no requirement for any wage increases for existing agreements.

**Mr Bauer:** No, but at least the current requirement is that the employees, the unions and the employer can negotiate a reasonable wage increased based on the circumstances of the project and the employer. As the senator pointed out, we could face a situation now that there is one imposed on the employee which has a very minimal wage increase, which they don't get a say in and they don't get their terms and conditions determined by any reference to them.

**CHAIR:** Would you agree with Tony Burke, who is a shadow minister, who said, 'Vulnerable workers getting their money back quickly has to be the highest priority'?

**Mr Bauer:** I'm not aware of the quote from Tony Burke.

**CHAIR:** You'd agree with the sentiment though wouldn't you?

**Mr Bauer:** The sentiment is that people who have suffered under the pandemic, particularly those who've contributed to the recovery, should be able to receive a reasonable outcome as a result.

**Mr De Pledge:** It should be a priority, whether it's the absolute highest one depends on what we're comparing it to but absolutely a priority.

**CHAIR:** Do you support Labor's opposition to reforms that provide greater deterrence for underpayments, especially deliberate underpayments?

**Mr Bauer:** I don't understand the context of the question

**CHAIR:** Would you support greater deterrence for underpayments, especially deliberate underpayments?

**Mr Bauer:** Of course I would.

**CHAIR:** Would you support quicker recover of underpayments through an expanded small claims process?

**Mr Bauer:** In that single aspect, yes, a quicker recovery would be good.

**CHAIR:** Would you accept that the bill makes the processes for recovering underpayments quicker and easier?

**Mr Bauer:** I'm not aware of the detail of that. I'll take that on notice.

**CHAIR:** Would your union prefer an enforcement regime that is improved or one that stays the same in the current system?

**Mr Bauer:** An enforced regime is always preferable.

**CHAIR:** Do you accept that the current industrial relations system is too complex?

**Mr Bauer:** I think there can be improvements in relation to the current industrial relations system, yes

**CHAIR:** What is the effect of the current section 189 and how does it compare with the proposed change?

**Mr Bauer:** I'm not aware of that detail. I'd have to take that on notice.

**CHAIR:** Do you believe that the views of employees covered by an agreement should be taken into account in applying the BOOT test?

**Mr Bauer:** Yes.

**CHAIR:** Do you support the focus on actual circumstances rather than hypothetical circumstances?

**Mr Bauer:** Yes. I don't understand the context of the question, but yes.

**CHAIR:** Hasn't that consideration led to considerable delays in agreement approvals?

**Mr Bauer:** My understanding, in relation to agreement approval delays, is it's mainly because of the resources of the Fair Work Commission.

**CHAIR:** Doesn't the bill change that focus for the better?

**Mr Bauer:** I don't believe so. Given my understanding of the bill in relation to the issues now that have to be undertaken and considered by the Fair Work Commission I think that disadvantages the workers in relation to their representation under the certification process.

**CHAIR:** I might have a couple more questions but I understand that Senator Walsh has some questions.

**Senator WALSH:** Thank you. My question is for Mr De Pledge. Your fellow members go out 24/7, rain, hail or shine, to assist people when they need it the most. The provisions of this law allow employers to go under the BOOT test and the award, specifically in relation to penalty rates and overtime. How would that affect you and the people who you work with? Would people want to do the job of going out 24/7 in any kind of environment without those penalty rates? How would it affect their families?

**Mr De Pledge:** It would have a very strong effect on their families and on themselves. The removal of penalty rates is effectively undervaluing their sacrifice of going out at 11 o'clock at night or at 6 o'clock in the morning and on weekends, or on Christmas Day or Easter. It's undervaluing the worker in general.

From my point of view, working shift work on patrol and being rostered for up to 365 days a year—not continuously, but with the appropriate breaks!—it's an undervaluing of our skills and of our labour. Basically, it's as simple as that. Yes—it's not good.

**Senator WALSH:** Mr Bauer, related to that: this legislation allows employers to bargain under the award. What do you think the implications of that would be for having any kind of level playing field in the industries that you represent? It would create a race to the bottom of labour standards, wouldn't it?

**Mr Bauer:** I believe so. In relation to those workplaces where there is union representation, where the union is able to come in and represent the workers in those situations, I think there's an ability for the union to support, inform and represent those workers so that their conditions are protected. But our concern would be about those places where there isn't that representation and advice available to the workers, that they will suffer. I think they will be forced into agreements, or talked into agreements, which aren't to their benefit. It will be a race to the bottom in that situation. Then, obviously, those people who are well represented and who have good conditions will be in the situation where they're under pressure to maintain those conditions because of the inequities that will be in place across industries and workplaces.

**Senator WALSH:** Thank you.

**Senator O'NEILL:** I have a question that you might want to take on notice. We've had a massive drop in the eligibility criteria for a greenfields agreement. We talked about the length of them, but it's dropped to \$250 million. It sounds like a lot to normal Australians, because we don't have that money washing around in our accounts, but in terms of big businesses and the manufacturing sector that's not really very much. Could you provide on notice some understanding for the committee about the advantages or disadvantages of the government's proposed drop to \$250 million. That would be very helpful.

I'd also like to ask, given your long experience in the industry and your understanding, both Mr De Pledge and Mr Bauer, that if this legislation were passed and it took away the things that you were talking about with Senator

Walsh—if it took away any incentive for people to do your job; to go out and change a tyre, jump-start a car or organise somebody into safety—if that disincentive becomes very strong out of this legislation, what will be the impact on the community? That question is to you, Mr De Pledge.

And to Mr Bauer, because you understand the legislation: what's your recommendation to the crossbench—to Senator Patrick, to Ms Rebekha Sharkie and Senator Griff? What should they do with this legislation and why? Can I go to Mr De Pledge first?

**Mr De Pledge:** There would be fewer skills in the trade. Mechanics wouldn't be attracted to the underpayment compared to what we get now.

**Senator O'NEILL:** Is that a risk to the safety of the community, Mr De Pledge?

**CHAIR:** We might need to—I'm just looking at the time.

**Senator FARRELL:** We've got plenty of time.

**CHAIR:** We have a minute, Senator Farrell.

**Senator FARRELL:** That's plenty of time for the witness to give his answer if you don't interrupt.

**CHAIR:** You're the king of interruptions, Senator Farrell! Mr De Pledge, please.

**Mr De Pledge:** Overall, there would be fewer skills in the industry. There would be less dedication by employees, being undervalued. What else was in your question to me?

**Senator O'NEILL:** Does it make the community less safe if there are people not able or willing to do these jobs anymore because the conditions and the pay are so bad?

**CHAIR:** You might need to take that one on notice. Mr Bauer, I think you had a question to respond to.

**Mr Bauer:** To answer that question: I would urge the crossbench not to support this legislation—to reject it, in fact—and to hold discussions with the industry parties, particularly the unions and the workers. We're quite willing to meet with the crossbench senators and have discussions with them, identify the problems that this legislation has and talk to them about some legislation that could be supported that would assist industry and workers.

**Senator O'NEILL:** If you could provide on notice the safety implications if this legislation passes, in the context of the type of work—

**Mr Bauer:** Yes.

**Senator O'NEILL:** Thank you.

**CHAIR:** I've got one question on notice too: in what circumstances does Labor's current section 189 enable employers to bargain under the award? You can take that on notice. Thank you both for coming along today.

**BONNER, Mr Rob, Director, Operations and Strategy, Australian Nursing and Midwifery Federation (South Australian Branch)**

**CULLEN, Ms Karin, Member, Australian Nursing and Midwifery Federation (South Australian Branch)**

**PULLESTON, Ms Belinda, Member, Australian Nursing and Midwifery Federation (South Australian Branch)**

**SHARP, Ms Lori-Anne, Assistant Federal Secretary, Australian Nursing and Midwifery Federation [by audio link]**

**WILSON, Mrs Ann, Member, Australian Nursing and Midwifery Federation (South Australian Branch)**

[11:01]

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

**Ms Sharp:** I'm a registered nurse.

**Ms Cullen:** I'm a registered nurse and a ANMF worksite rep.

**Mrs Wilson:** I'm an enrolled nurse in aged care.

**CHAIR:** Ms Sharp, I invite you to make a short opening statement and then I will proceed to questions from Labor senators.

**Ms Sharp:** Thank you to everyone for the opportunity for us to share with you our views on the proposed amendment to the Fair Work Act and why we strongly oppose the bill. Just a little bit of background: the ANMF currently has over 300,000 members across the country, making it one of the largest unions in Australia. Our members are nurses, midwives and carers, and they work across both public and private hospitals, community settings, medical centres and in aged care.

Through the course of 2020 we have witnessed the extraordinary commitment and the sacrifice of workers across many industries. The health and aged-care workforce was certainly no exception. We saw nurses, midwives and carers volunteer in large numbers to be part of the surge workforce. We saw them coordinate COVID testing clinics, treat patients in ICU and COVID wards and care for some of the most vulnerable elderly residents in our nursing homes, and also adjust to a rapidly changing environment. Health and aged-care workers had long shifts, shortages of personal protective equipment, fatigue, stress, fear and were witness to tragic loss of life, especially in the aged-care sector.

We're extremely disappointed that the government, rather than award, is seeking to punish these very workers. We're very concerned that this legislation is headed down the wrong path and will go no way in addressing some of the systemic problems—stagnated wage growth, insecure work and the increased casualisation of the workforce. We're particularly worried about the impacts it will have in our aged-care sector, a growing sector, which is largely female dominated, undervalued, already low paid and heavily weighted on the side of the employer. The bill does nothing to address the power imbalance that currently exists between employer and employee, and, in many instances, it will make issues worse at a time when recruitment and retention of skilled staff will be absolutely critical in the aged-care sector. This bill will make it more difficult to grow the skilled and qualified workforce we so desperately needed in this industry. After all that has been learnt from the Royal Commission into Aged Care Quality and Safety we should not be heading in this direction. Instead, we should be aiming to improve wages and conditions, provide security and certainty around employment and restore the power imbalance that currently exists while not seeking to undermine any safety nets.

As outlined in our submission, we've emphasised our concerns on particular amendments proposed to the Fair Work Act in relation to the definition of 'casual', the casual conversion clause, the extension to the BOOT, enterprise agreements and modern awards. I will now hand over to our members to share their personal story on how this proposed legislation will potentially impact them. I believe Belinda is first.

**CHAIR:** Sorry, we've got limited time. What we might do, Ms Sharp, is Labor senators or other senators might wish to ask that directly. We need to get to questions, so will ask the Labor senators to see who wishes to kick off the questioning. Senator Farrell.

**Ms Sharp:** Excuse me, Chair. I appreciate that, but they've taken a day off work to come here and they have prepared some of the impacts to their working life—

**Senator FARRELL:** Don't worry, they'll get a chance.

**Senator O'NEILL:** It's alright; we'll listen.

**CHAIR:** I appreciate that, and they're welcome to table their statements. I'm sure the Labor senators will list the required information that they're looking after.

**Ms Sharp:** Thank you.

**Senator FARRELL:** Don't worry, Ms Sharp. The government members may not want to hear what your members have to say, but I can assure you the opposition members do want to do that. Thank you all for coming along. I know Mr Bonner here. How many years have you been with the federation?

**Mr Bonner:** It's my 37th year.

**Senator FARRELL:** Congratulations. Ms Sharp, obviously your members have been very much in the frontline of the pandemic. Of course it's been bad in all states. It's been particularly bad in Victoria. Is this a kick in the guts by the Morrison government for all the hard work your members have put in saving and keeping Australians safe during the pandemic?

**Ms Sharp:** Absolutely, and, as I mentioned in the opening statement, we do see it as a punishment and not a reward. We know that as we are coming near to the final recommendations of the royal commission into aged care that we will hear about, and we have already heard about, the chronic understaffing that exists in this sector. We think that some of the provisions that this amendment to the Fair Work Act will just go further to exacerbate that problem and increase the casualisation of this workforce.

We have a particular concern around the definition of 'casual', because we know that in this sector, the aged-care sector, that the consistency of care provision in nursing homes is a crucial factor in ensuring quality and safety for residents. It's well recognised that people with dementia and high needs need a continuity of care, and that means that we need staff that are regular and not casual employees who can work across a number of shifts and be ad hoc. We need a regular workforce. This not only benefits the residents but also benefits the worker, because they have secure employment that they can rely on, that is certain, which means that they have hours that they can count on and a wage that they are certain of that they can then go and spend in the community and in the economy. We are very concerned that many elements of this bill will increase the casualisation and that will have dire impacts on the aged-care sector.

**Senator FARRELL:** Ms Pulleston, what would you say to the Prime Minister, if you had an opportunity to address him directly, about the way that this legislation rewards you for all the hard work that you have put in over the last 12 months?

**Ms Pulleston:** I would say that it's a real kick in the guts. Other people got to stay home and work from home and not have the risk of taking this infectious disease home to their families. That is something real we had to prepare for. I had to prepare my husband and my kids and say, 'If there is an outbreak, I am not coming home to give it to you. Mum has to stay somewhere else.' That was a real fear that we had to face, and we still showed up. Cutting shifts and making life harder for us when we are going to have to put in that extra effort and when it does affect our residential aged-care facilities, that's the time when everyone has to stand up. I want all the other nurses to stand up at that time, and I would hope that we would be rewarded for doing so.

**Senator FARRELL:** Ms Cullen, what would you say to the Prime Minister if he was here today?

**Ms Cullen:** I work in an acute area in a private hospital and not only have we been the backbone of the healthcare system this year, we have also done shift work, worked public holidays—working at Easter and Christmas, which I am sure the Prime Minister probably hasn't—and have faced the risk of taking this initially unknown virus home to our families. What he is trying to do is just a slap in the face for all the nurses who have worked so hard this year.

**Senator FARRELL:** Mrs Wilson, what would you say to the Prime Minister?

**Mrs Wilson:** I would say to the Prime Minister that he should probably have a day in aged care and come and work with me, because this is hard work. It is back-breaking work. We are emotionally drained. You work long hours, often without pay. Having this COVID around has added another layer of stress on top of our already stressful job. You are worried that you are going to bring it into the facility and bring it home. We are looking after the most vulnerable in our society, and it is stressful.

**Senator FARRELL:** Mr Bonner, would your members share the view of the three people who have just spoken?

**Mr Bonner:** I think that it is a common view of our members. They've worked extremely hard over the last several months to keep the community as safe as they can. I think the point that needs to be made in relation to the bill is that it is not a single provision that will have an impact on our workforce; it's the combination of provisions.

It is the interaction between casual and part-time work. We've got 80 per cent of our people in the private sector working either part-time or casual shifts. They are predominantly female, with 90 per cent of our industry being female dominated. There are low wages. A huge number in the private sector are award reliant. Bargaining is grinding to a halt under the current scheme. It is extremely hard to get new deals in aged care. There are those who are getting really low wage outcomes, and we can't achieve anymore. It is Commonwealth funded, so the private providers pass the buck onto the Commonwealth not giving them enough money to pay the wages in the first place, and there is no real transparency in the way the funding operates. So there is a whole conflation of issues that means that our people, particularly those who are in aged care, are at risk now—and this bill makes it worse. We are saying that the problem isn't just one bit; it's the whole sum of the bits that need to be taken into account. That is the message that we want to make clear.

**Senator FARRELL:** Ms Sharp, how will this bill interact with the changes that will come about as a result of the aged-care royal commission into aged-care quality and safety?

**Ms Sharp:** We know that the report is due to come down in two weeks and we know that there is going to need to be an increase in skilled staff in this area as there has been chronic understaffing. We're concerned about the proposed changes to the modern awards. Even though the nurses award and aged-care award aren't listed in the 12 in the proposed bill, we know that they can be regulated in at a whim. We're concerned about the part around the additional hours for part-time workers. We're concerned that that would just be a race to the bottom. We already have a problem with low contract hours in this sector, where employers tend to employ to low contract hours, and, in reality, workers might be contracted to work a 10-hour week but they're working a 30-hour week over a 12-month to two-year period. It gives all the flexibility to the employer and no security to the worker. We're concerned that, at a time when we're about to have some generational reform in the aged-care sector when the recommendations are handed down from the royal commission, if we're looking to go to the lowest common denominator, to have casualised staff, with many staff working short hours, then this will be a model for employers to employ everyone at 16 hours and just flex up as necessary. I've already spoken about the consequences that has on the people that they look after and how the workers who are performing this job have no security.

Also, as we've already seen during COVID and the dire consequences that have come from that, it involves a necessity for workers to seek secondary employment to supplement a wage so that they can actually have a living wage to live on, and that means that they will have to work across facilities. We've seen the consequences of that play out, tragically, particularly in Victoria but across all states, where nurses working in aged care, and aged-care workers, have been forced to seek secondary employment, with associated problems with infection control and prevention during COVID. We've seen nurses, as a consequence, have to be stood down from their secondary employment in some instances, and this has happened in South Australia with no recompense. So they've actually lost wages.

This should be a time when we actually enhance the working conditions of workers in aged care. They are some of the most incredible workers. It is really difficult work. I know that the members there today will talk to that. It's incredibly emotionally and physically exhausting. They've been undervalued for years. It's predominantly, as Rob mentioned, a female dominated workforce—almost up to 90 per cent. It also has a high migrant population in the workforce. I think that the power imbalance that already exists, which is very significant, is just going to be further exacerbated by some of the amendments proposed in this bill. That is just going to go no way to improving quality and safety in aged care in this country, which is what we so desperately need.

**CHAIR:** Thank you. Senator Faruqi, you have the call.

**Senator O'NEILL:** Before we go to Senator Faruqi, I know that Ms Pulleston, Ms Cullen and Mrs Wilson have statements that they're not going to have time to read because this is a very truncated inquiry. I invite you to provide them to the secretariat, and they can be tabled today. If you're willing to do that—

**CHAIR:** I've already done that. I think we're happy to do that. Senator Faruqi.

**Senator FARUQI:** Good morning, everyone. Thank you so much for being here. Even more than that, thank you to you and your members for looking after the community at such a difficult time, while you put yourselves at risk. As a Greens senator, I can assure you that we are listening to you and we will be doing everything we can to reject Prime Minister Scott Morrison's antiworker legislation. In your submission, you point out that about 88 per cent of workers in the residential aged-care, home-care and direct-care sectors are part-time or casual workers and roughly the same amount are women. With the bill's provisions which heavily impact casual workers, what are going to be the impacts on women's participation in the workforce? How much more stress and anxiety is that going to create for workers?

**Ms Sharp:** As you point out, it's going to be a huge inconvenience for women when they are uncertain about their hours—we know that women bear the most family responsibility: the responsibility for child care and caring for elderly parents—and when they're contracted to work a minimum of 16 hours a week and can be flexed up and down on a whim. And just remember that power imbalance again, because, in a lot of private aged-care settings, if you are not available to work the extra shifts that come up then often there is retribution: you won't be offered a shift again. So you have to make yourself available to get the extra work. That power imbalance should not be underestimated. If you're a woman working, this makes it very difficult to organise child care. How can you book child care when you don't know what days you're going to work? It also makes it very difficult to participate in the general joys of life, in terms of attending activities or planning something on the weekend with friends. For one, you're low paid. You can't guarantee what your remuneration will be. It's very uncertain. So it's a really terrible way to live. This precarious work, which we've allowed to be fostered and now are going to exacerbate with this proposed bill, is just not how we should expect Australians who are working in a care sector to be treated. Women are juggling multiple things. Some certainty around hours should be the least that we should be able to provide for women participating in the workforce. We should not be trying to make it harder for women. This casualisation disproportionately affects women. More women are nurses. More women are working as aged-care workers. And it's no coincidence that it's low paid. I just think that we need to be able to strengthen the industrial relations around this issue so that it provides more certainty for workers and a better quality of life for them as well.

**Senator FARUQI:** You mentioned migrant workers, and obviously, in the sectors that you represent, there is a large proportion of migrant workers. Do you think that it will similarly exacerbate the issues that they already face?

**Ms Sharp:** Absolutely. It's very difficult for migrant workers in aged care. They're not often across the enterprise bargaining agreements and often not a unionised workforce either. There are often multiple layers of barriers to have access to migrant workers. There's a real culture of fear that exists in aged care—particularly in the big for-profit or not-for-profit aged-care facilities—that if you speak out then you'll have your hours cut next week. And, because of the precarious nature of their employment contracts or casualisation, that's very easy to do. That means that workers are much less likely to speak out and will just basically have to take the hard stick of the employer. And that's not how anyone should be treated.

**Senator FARUQI:** Women and migrant workers have really borne the brunt of the COVID crisis as well, so it makes no sense that this would come at this time. But, anyway, moving on: I'm also really interested in—if you are able to share them—any of the priority issues raised during the working group process. I understand that your federation was involved in the casual working group. Are there any priorities that you raised there that you could share?

**Ms Sharp:** Yes.

**Senator FARUQI:** Can you tell us if any of those are actually reflected in the bill?

**CHAIR:** That will be your last question, Senator Faruqi.

**Ms Sharp:** I'll be quick. I was involved in that five-month process, during the lockdown in Melbourne, and we entered it all in very good faith. How disappointed we were to see this legislation, which didn't reflect any of the discussions or some of the consensus we had around the 'casual' definition. It seems that the government has gone straight to the hands of the big corporations. We're not opposed to a casual definition in the Fair Work Act, but it needs to be more than just the employers designating the future employee as a casual simply by stating it's so. There need to be descriptors of the nature of what casual work actually is, based on those common-law principles. Casual conversion is really important, and there will be no increases in casual conversion with this amendment. There are so many loopholes of exclusion for the employer, and there is only consent arbitration. There's no way that an employer is going to consent to arbitration when it's going against their own decision. The power balance is all, again, with the employer. If we want to be able to encourage this workforce—it's an ageing population, and we're going to need aged-care workers—we need to provide an environment that people are going to be attracted to. And the people that they look after deserve adequate staff to care for them.

Going back to the working groups, there is absolutely nothing in this bill that reflects some of the discussions. That's incredibly disappointing. We, as did everyone in that working group, went into it in good faith. To be quite frank, I feel like we're just being completely ignored.

**CHAIR:** Ms Sharp, what proportion of your union members are covered by enterprise agreements?

**Ms Sharp:** We have a large—it's just sitting under about 90 per cent. But, in saying that, that's our overall membership. In the private aged-care sector it's slightly less than that. It's becoming increasingly hard. In the last



couple of decades, when aged care was run more as a small business, before the big corporations took over, it was easier. There was a capacity to really be able to negotiate, bargain in good faith and have some good outcomes with enterprise bargaining agreements. But now, as those small places have been gobbled up by big corporates, it has been very difficult to have good outcomes in EAs for some of those sectors.

**Mr Bonner:** There's a significantly lower penetration of enterprise agreements covering personal care workers in the aged-care sector, as opposed to registered and enrolled nurses. So, although the density is pretty high in the nursing workforce, the care workforce would be probably half of that. So it's significantly low, again.

**CHAIR:** Would you prefer simplification of the rules, or for the rules to remain the same and bargaining to decline further?

**Ms Sharp:** We wouldn't be proposing that bargaining decline further.

**CHAIR:** But you'd prefer the rules to be simplified, though, wouldn't you?

**Ms Sharp:** We'd like the rules to be balanced so that the employee gets an opportunity to have a say in some of their working conditions. I think that the exemption of the BOOT just goes to allowing for that slippery slope of conditions and for some of those safety nets to be eroded. I know that the award wage won't be touched, but, particularly in our sector, a lot of the make-up pay is around penalty rates, for example, or shift allowances or meal allowances. So, to supplement their income, nurses actually do tend to work unsociable shifts to get those penalty rates. They're at risk with this legislation. If the BOOT is not going to be applied, those penalty rates are at real risk. I know that those three members who are in that room—I'm pretty sure that all of them work penalty rates and have to work unsociable hours just to make a living. Enterprise bargaining agreements—absolutely. It's crucial that we improve the working conditions for the health and aged-care sector, and it's crucial that they have certainty around their work hours. When people have security and when they earn a living wage, they're much more likely to go and spend it in a local business, to go and engage in the community. When you're living week to week, which sadly a lot of aged-care workers are—they're living week to week—it's very, very difficult to put back into the economy. I feel like the very thing that the government says they're trying to achieve with this legislation, with this amendment to the fair work act is just not going to happen.

**CHAIR:** How often have members of your union voted up an enterprise agreement that has actually been opposed by your union?

**Mr Bonner:** We've given some specific examples of that in our submission. In a number of cases in South Australia over the last 12 months, following submissions by the union to the fair work commission, the employer was required to give undertakings about the operation of an agreement that was not seen to satisfy the BOOT as it currently exists. So, if it hadn't have been for the action of the union, those agreements could have sailed through.

**CHAIR:** It being 11:30, the committee will now suspend—

**Senator O'NEILL:** Can I ask one question?

**CHAIR:** Senator O'Neill is going to ask one question. We all know what it's going to be! And you can take it on notice.

**Senator O'NEILL:** You're South Australians who've been right at the front line. While you've been doing that, the government was cooking up this omnibus bill. We've had it roundly disregarded by evidence this morning. I look with interest to read what you wrote, seeing as you didn't get to put it on the record today. The message is to the South Australian senators in the first instance—and Ms Sharkie as well: should the government proceed with this bill or should the senators reject this?

**CHAIR:** Can you put answers on notice?

**Senator O'NEILL:** No, can't they answer on the record? That is so important.

**CHAIR:** They are going to answer on the record.

**Senator O'NEILL:** They've only got to say one word.

**CHAIR:** They can take it on notice.

**Senator O'NEILL:** They can, but that's unreasonable.

**Ms Sharp:** Reject it, please.

**CHAIR:** Okay, they've answered. The committee is suspended.

**Proceedings suspended from 11:31 to 11:47**

**LAMBERT, Mr Wes, Chief Executive Officer, Restaurant and Catering Australia**

**CHAIR:** Welcome. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Is there anything you would like to add about the capacity in which you appear today?

**Mr Lambert:** I am the CEO of Restaurant and Catering Australia, the registered organisation responsible for the restaurant award.

**CHAIR:** I now invite you to make a short opening statement—I emphasise short. At the conclusion of your remarks I will invite members of the committee to ask questions.

**Mr Lambert:** I am going to keep it short and sharp, because I want to keep you on time. Thank you so much for everyone in this hearing for giving Restaurant and Catering Australia an opportunity to present. I look forward to all of your questions.

Restaurant and Catering Australia is the peak body for the restaurant industry, which includes restaurants, cafes, caterers, small bars, coffee shops and function and event centres of the accommodation and food service industry. We all know it was one of, if not the most, hardest hit industries during the COVID pandemic. At its peak we lost 441,000 jobs, and we have now recovered about 360,000 of those jobs. However, there are a hundred thousand jobs that remain unfilled due to the demands and due to the lockdowns and restrictions and everything COVID.

Ultimately, we come before you here today to speak to you about our support of the omnibus bill. Our industry has benefited from the flexibilities that have been afforded throughout this entire process, with the flexibilities provided through JobKeeper. Many businesses in the accommodation and service industry have been able to keep their doors open due to those flexibilities. We believe that small businesses—and 93 per cent of the restaurant industry are small businesses employing fewer than 20 people, with single units—will benefit from the omnibus bill in all ways. It certainly will allow them to continue to trade in this very tough time.

We also note that any alternative ideas or plans that may be upcoming to give casuals and independent contractors full leave and entitlements, and make these portable, will be very, very difficult for hospitality businesses, which are already on razor-thin margins. It certainly will close more doors to businesses, which will ultimately lead to many more job losses. Our industry just cannot afford to double dip and pay entitlements and loading to its workforce. I welcome any and all questions.

**CHAIR:** Thank you, Mr Lambert. Senator Walsh.

**Senator WALSH:** Thank you, Mr Lambert. Could I start by getting on record whether you support the simplified additional hours agreement provisions.

**Mr Lambert:** Under the section related to work flexibilities, or casual employees?

**Senator WALSH:** Do you support the simplified additional hours agreements?

**Mr Lambert:** So are you speaking under s. 189?

**Senator WALSH:** I'm talking about the arrangements that allow part-time workers to be rostered up and down between 16 hours and 38 hours per week. Do you support those provisions?

**Mr Lambert:** I'm not sure if you know that, in the restaurant award at present, if part-time employees work more than their rostered hours employers are actually required, under today's legislation, to pay them overtime. Ultimately, flexibilities in part time are actually better for the restaurant industry, because ultimately we would rather have a more stable workforce.

**Senator WALSH:** I am familiar with the part-time flexibility arrangements that were inserted into the award in 2018, which you've referred to. Those arrangements allow the sort of flexibility that you've described within a range of hours—is that correct?

**Mr Lambert:** My understanding of the restaurant award is that doing over your rostered hours, for a part-time employee, requires the employer to pay overtime. In that particular scenario it's better off to be a casual in a restaurant because the flexibility is to work up to 38 hours or beyond without attracting those overtime hours. We have lobbied for and worked very hard during COVID to get the flexibility to part time, because that is what the restaurant and hospitality industry needed in order to survive and keep the doors open. We do expect that for some years this flexibility will still need to be in place.

**Senator WALSH:** As you've said, your sector already has some part-time flexibility arrangements, which were introduced just a couple of years ago, and you've said that part-time flexibility arrangements should, in effect, increase opportunities for permanent employment, instead of casual employment—in your submission. Is

there any evidence that casualisation in your sector has decreased with the introduction of those part-time flexibility arrangements two or three years ago?

**Mr Lambert:** Ultimately, the restaurant industry thrives on casuals, and that is a two-way street, meaning that there are many employees who need that flexibility during the week: high school students, students, mums, individuals who want to work at multiple locations. Ultimately, the casual nature of hospitality means that there are lots and lots of casuals working in our industry, and—

**Senator WALSH:** Sorry, Mr Lambert. The chair is keeping us to a really tight time frame. The question was: over the last three years since their introduction, have part-time flexibility arrangements in your industry decreased casual employment? I don't think they have. I think casual employment has stayed high in your sector.

**Mr Lambert:** The rate of casual employment has not grown and has remained stable for the past 22 years, on average. In our industry, casual employment—

**Senator WALSH:** So, it hasn't decreased with the part-time flexibility arrangements introduced in 2018?

**Mr Lambert:** Senator, I've answered the question. I'm happy to move onto the next one.

**Senator O'NEILL:** With respect—Chair, Mr Lambert has not answered the question, and he doesn't get to determine whether he's satisfied with his answer. He needs to answer Senator Walsh's question.

**CHAIR:** The witness has answered the question to the best of their abilities—

**Senator O'NEILL:** No, he's answered a different question.

**CHAIR:** and if the witness is unable to add further information to the question that has been put, they have concluded their answer.

**Senator WALSH:** So, Mr Lambert, there's been no decrease in casual employment since the introduction of part-time flexibility in your industry. That's correct, isn't it?

**Mr Lambert:** In the peak of COVID, 441,000 jobs were lost. So, I would say that yes, there was an extreme decrease in casual employment, and it remains so.

**Senator WALSH:** As a proportion of total employment, has there been a decrease in casual employment with the introduction of part-time flexibility arrangements? I think the evidence is that there has not been a decrease in casual employment. But I want to ask you whether it's your submission that you would like employers in your industry to now be able to have people employed on a part-time basis, working, say, 16 hours one week and up to 37.5 hours the next week, as provided for by the simplified additional hours agreements. Is that your submission?

**Mr Lambert:** In essence—and I will answer your question in a finite way—in our industry, which is the most restricted during COVID, our employers, the entire industry, must have the flexibility to vary hours, because we don't know when a premier or the government is going to lock down or restrict any particular state, and we expect that to be the case for some years from now. We know that the arguments of the past must be left in the past and that we must move forward with the current and present situation in order to keep as many businesses open and as many Australians in jobs as humanly possible under those flexibilities.

**Senator WALSH:** The effect of this provision in your industry would be that someone could be employed on a permanent basis and work 16 hours one week, 35 the next, 18 the next and 36 the next week. They'd effectively be treated as a casual, wouldn't they?

**Mr Lambert:** Ultimately you are coming up with a 'what if?' roster. Every business is different, and it's difficult to answer a 'what if?' question with a fixed answer. Ultimately the hospitality industry needs the flexibilities in order for them to operate for the foreseeable future.

**Senator WALSH:** You've talked about the difficulties the sector has faced during COVID and during lockdowns. Effectively people have literally been unable to walk into hospitality venues and open their wallets, and that's been the primary problem. We've heard testimony today that this legislation is likely to lead to people being paid less. If people are paid less in the economy, what is the impact of that on businesses in the hospitality sector?

**Mr Lambert:** That's a very wide question. I couldn't answer the financial question in relation to what someone earns versus what they then go and spend in a restaurant. What I can tell you is that in the restaurant industry everyone is worse off if a business fails, and tens of thousands or hundreds of thousands of jobs go. We believe that these amendments are designed to keep businesses growing and create new jobs, ultimately leading to extra hours. It's very important, as you said, that those flexibilities are left there so that businesses don't have to close their doors, because zero earnings, you would agree, is much worse than flexible earnings.

**Senator WALSH:** Would you agree that your industry relies on having Australians having that money in their pockets and having the confidence to spend?

**Mr Lambert:** Ultimately that's a wider question beyond me. You cannot spend money you don't have. It's the chicken or the egg—a business fails because it doesn't have flexibility then it has no employees to employ for them to have money in their pockets to go spend. Ultimately it is up to all of us to come up with a solution that leads to as many Australians as possible being in stable employment and the economy growing, including the hardest hit accommodation and food service industry.

**Senator WALSH:** It's a pretty simple question, Mr Lambert. Does your industry need Australians to have money in their pockets and the confidence to spend it in restaurants and cafes? It's a pretty simple question.

**Mr Lambert:** Every industry needs Australians to have money in their pockets, which is why we support the omnibus bill that leads to the flexibility to keep more businesses' doors open.

**Senator WALSH:** You're effectively saying that the businesses that you represent do need people to be able to come in and spend money in your establishments, but at the same time you're also supporting measures that could lead Australian workers to have a significant cut to their take-home pay and surely that would be bad for your industry, for that people that you represent?

**Mr Lambert:** You have made a statement there. My answer stays the same. It is very important that businesses are able to stay open so that Australians can be employed. Yes, for anyone to buy anything in our economy they must have a job, so it is very important that Australians are employed and it is important that businesses have the flexibility to keep them employed. We're the hardest hit industry. We remain down 15 per cent year over year and in some places up to 60 per cent year over year. So for those businesses it is super important that they're able to operate under the flexibility of the omnibus bill so that they're not an evicted business or a for lease sign, that doesn't help anyone.

**Senator WALSH:** Just to confirm, and I hope I get a straight answer for this, Mr Lambert, you'd like businesses in your sector to have the flexibility of hiring someone on a permanent basis and rostering them up and down between 16 and 38 hours a week?

**Mr Lambert:** Businesses need the continued flexibilities that have existed under JobKeeper and JobKeeper 2.0 and are in the omnibus bill in order to continue to employ people in the hardest hit industry in Australia. That is my answer. It was always going to be my answer.

**CHAIR:** I might just throw to Senator O'Sullivan who has some questions.

**Senator O'SULLIVAN:** Thanks very much, Chair. We're talking about this bill and other witnesses have suggested alternatives. One alternative proposal that's been put up by the ALP, which I believe they'll announce today, is that casual employees will have a right to portable annual, sick and long service leave entitlements. Do you understand this to mean that a casual employee who may have multiple employers—and I understand that, particularly in your industry, we do see that a lot; employees will have multiple jobs in that industry—will be entitled to receive leave from any one of these employers?

**Mr Lambert:** Those announcements are fresh and new and certainly we will review those and take that on notice. Ultimately, giving a casual or independent contractor full leave entitlements and making this portable will cripple our industry. Paying for a loading as well as any form of long service leave or leave or sick pay is more than our industry, that operates on razor thin margins as it is, could bear. Again, I do take the particular question on notice as we await further announcements in relation to alternatives.

**Senator O'SULLIVAN:** Sure. But if it were to mean that all employers would be obliged to provide that entitlement, can you imagine what would happen if there were, say, a new employee—someone who had just started in a new job? Which employer would be required to pay it? The one that they're being employed by just at the moment or others where they may have been for a longer time?

**Mr Lambert:** You have just introduced more complexity into an award system—into an award that is already very complex. The administrative requirement on multiple employers would be even further cost, more bureaucracy and more red tape for an industry that, historically, has a lot of bureaucracy and red tape.

**Senator O'SULLIVAN:** And it would be catastrophic to your industry if this were to transpire?

**Mr Lambert:** It would be a massive tax on jobs and it could potentially cripple the industry. We're talking about businesses closing because they just can't afford to pay loading and leave entitlements.

**Senator O'SULLIVAN:** Would it be fair that a casual employee who changes jobs would be entitled to portable leave accrual, where a permanent employee who changes jobs would not?

**Mr Lambert:** Again, you're presenting me with alternatives that are being announced today. Ultimately, I'll take that on notice and continue to do our research based upon what's released today in terms of alternatives.

**Senator O'SULLIVAN:** Okay. But you raised some very serious concerns that your industry would have with that. Can you describe the impact of COVID on the restaurant and cafe sector? Obviously I don't want to take up too much time, but what's the current state of recovery in your sector right now?

**Mr Lambert:** It's a two-speed economy. I'll go through it very quickly. The entry-exit report will be out in eight days. We expect that to 30 June 2020 the net exit could be as high as 10 per cent, just to 30 June when, historically, it is flat or slightly growing as an industry. We do expect that to be quite negative. And we expect that the entry-exit report that comes out a year from now will be even worse, because it will have taken into account the second wave in Victoria and all of the lockdowns and restrictions in place around the country as there were escape cases from hotel quarantine.

In the CBDs, our industry remains devastated. As the protections expire in each state, there are police and eviction notices being put on restaurants, cafes, coffee shops, event and conference centres by the day. We are fielding calls from members literally daily, saying that their landlords are now coming down on them quite hard as the protections are expiring. And as JobKeeper comes to an end we know that many, many businesses in our industry will end up closing their doors because they have not fully recovered.

It's different state by state; some states have recovered better than others. But the industry in total was down 15 per cent, year on year. For our industry, that means, ultimately, that it's not profitable, on average, because our margins are so small. Our recent benchmarking report told us that over 30 per cent of businesses to 30 June last year lost money or broke even, and that was just a smaller sample size.

We know that our industry will remain the hardest industry to recover. Every time there's a lockdown and every time there's a restriction, the road maps always apply to the density and the caps in hospitality businesses. So it is a [inaudible] recovery for our industry that we do not expect to recover for many, many years.

**Senator O'SULLIVAN:** There's a big range of circumstances, and this word has been used extensively over this last 12 months: unprecedented. Would you say that the level of differences that we have right now are unprecedented? And does that then mean that the flexibility you've been afforded in this time is critical over the next period that this legislation allows for providing that flexibility?

**Mr Lambert:** Australia has never faced this type of situation. The Fair Work Act, written 11-plus years ago, did not account for a global pandemic and the situations that have presented themselves. It is unprecedented. We do hear sometimes other industries saying it is just an anomaly and that 2020 was 2020. For our industry specifically, we are going to be feeling the effects of the changed conditions in Australia in total for many, many years. Ultimately we don't expect that tourism will return in full—back to 100 per cent—until 2024 and some estimates say as far as 2026. With work from home and flexibility in the office, administrative and finance and banking industries, we expect the entire fabric of the restaurant industry will change because people are predominantly working from home, and we do expect more flexible work arrangements for office workers to be able to work from home, which will mean that the entire way the industry operated up until the end of 2019 has been turned on its head, and we do not expect it to ever go back to the way it was.

**Senator O'SULLIVAN:** What is the percentage of small businesses in your sector?

**Mr Lambert:** We represent an industry that the ABS says is about 47,000 businesses and 93 per cent of them are considered to be small businesses that earn less than \$38,500 a week in revenue and employ fewer than 19 people. So we are almost all individual small businesses. That [inaudible] without flexibility.

**Senator O'SULLIVAN:** Is there concern among your retailers with regards to casual employment?

**Mr Lambert:** They are all very confused because casual employment in the hospitality industry is different to other industries such as mining. They need surety around the definition of a casual. They need to know if they are going to continue operating their businesses. I can tell you, after speaking to hundreds of thousands of members, that this is front of mind for them. It is super important that we as a nation come to a definition of 'casual', and the omnibus bill certainly sets us in the right direction to do that. It doesn't take much research to know that we have an extreme skills and employee shortage in the hospitality industry and we certainly agree that more permanent employment will ultimately be the outcome of COVID, as businesses hire and retain the most highly skilled staff they can.

**Senator O'SULLIVAN:** I have seen your old schedule of award rates; it is as thick as an old phonebook.

**Mr Lambert:** It is 90 pages, with 76 pages of notes.

**Senator O'SULLIVAN:** You are talking about small businesses that maybe don't have the wherewithal of a large-scale organisation to deal with the complexity of that. It must be very difficult. I will leave that as a comment. Thank you very much.

**Senator O'NEILL:** Mr Lambert, can you guarantee to the people of South Australia and across the nation more broadly that the changes that you are supporting in this omnibus bill won't cut the pay and conditions of workers and it won't increase insecure work, including in your own industry. Can you make that guarantee, Mr Lambert, to Australians?

**Mr Lambert:** I can only speak for the restaurant industry. I cannot speak for any other industry because I do not study their awards or their conditions or anything. What I can say and what I will continue to say is everyone is worse off if a business fails.

**Senator O'NEILL:** Mr Lambert: yes, you have made that point. I want an answer to my question.

**CHAIR:** Senator O'Neill, please let the witness answer the question.

**Senator O'NEILL:** Well, he's going back to his old testimony. Can he guarantee the people of South Australia that there will be no cuts to workers' pay and conditions or an increase in insecure work in his industry?

**CHAIR:** Senator O'Neill, Mr Lambert was answering the question, and you interrupted him while he was answering it.

**Senator O'NEILL:** Can you answer my question, please, Mr Lambert?

**Mr Lambert:** You asked a good question, and I realise that you would like a yes-or-no answer. But, as we all know, there are no yes-or-no answers in IR legislation, so, ultimately there is no yes-or-no answer to your question, and we support this omnibus bill to provide the flexibilities that our industry needs to keep their doors open.

**Senator O'NEILL:** Are you advocating for pay rises for hardworking Australians and increasing secure employment? Or are you advocating for exactly the opposite?

**Mr Lambert:** We are all Australian citizens, and I am a dual citizen. We all want stable employment and we all want fair pay and conditions, and certainly we are advocating for that.

**Senator O'NEILL:** You cannot guarantee it, though, can you?

**CHAIR:** Senator O'Neill, one more question; we need to move on to the next witnesses.

**Senator O'NEILL:** Mr Lambert, you cannot guarantee it, can you? In your submission you say that there is high award compliance in the restaurant and cafe industry, and you have some ambivalence about what you're asking of the government. You say in your submission that the R&CA could potentially be supportive of the introduction of a new criminal offence for dishonesty and systematic wage underpayment. Is there something that's holding you back from supporting that part of the bill's provisions? Or are you not worried about the degree of wage theft that is widely reported in your industry?

**Mr Lambert:** We work very closely with the Fair Work Ombudsman, and they have publicly said that a majority of underpayments are unintentional underpayments. In fact, we have just been to the FRAC committee, and we are very, very committed to compliance with both the Fair Work Act and the restaurant award. So, we are certainly open to the omnibus bill and the provisions around compliance and enforcement, and criminalisation potentially in the intentional worst-case scenarios, which would have constituted theft under the regular criminal laws in Australia anyway.

**CHAIR:** That concludes your evidence here today. Thank you very much for your appearance.

**McKENNA, Mr Andrew, Director, Policy and Advocacy, Business SA**

**van der LINDEN, Ms Estha, Senior Policy Adviser, Business SA**

[12:18]

**CHAIR:** Welcome. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I invite you to make a short—and I emphasise the word 'short'—opening statement. At the conclusion of your remarks I'll invite members of the committee to ask questions.

**Mr McKenna:** Formed in 1839, Business SA, the South Australian Chamber of Commerce and Industry, is the state's peak employer body. We're a not-for-profit business membership organisation which works on behalf of our 3,500 members and the broader business community in pursuit of economic prosperity for both SA and the nation. We support the Australian Chamber of Commerce and Industry's submission to this inquiry. However, we have made our own submission and appearance to convey the importance of these changes in the South Australian business context. The most recent results from our December 2020 survey of business expectations are yet to be publicly released. However, we have preliminary data that shows that while general conditions are improving there are pockets of industry that are still in significant distress, from travel agents to tour operators to the events and live performance industry and many CBD service and hospitality businesses.

A range of businesses continue to be severely affected by social distancing and restrictions on travel, including a reluctance of people to travel interstate for fear of an outbreak, with associated isolation and quarantining requirements. In fact, many of the hardest-hit businesses are still down 50 per cent plus, with some having barely recovered 10 to 20 per cent of their pre-COVID revenues. While a third or less of SA businesses are still on JobKeeper 2.1, many of those businesses will be in need of further support beyond 28 March, both financially and legally, in terms of the ongoing flexibility to operate their business and maintain employment. This is why ongoing support through the industrial relations legal framework is so critical. Unfortunately, it will only be a matter of time before future outbreaks occur.

There are a number of key changes within the omnibus bill that we believe will assist in the economic recovery and therefore assist businesses, their employees and the country as a whole. From our perspective, the key areas are 'casual' definition, casual conversion, part-time employment, award flexibilities, enterprise agreements and compliance. We urge the Senate to ensure the passage of this bill through parliament and we welcome any questions on our submission.

**CHAIR:** Thank you very much. Senator O'Neill.

**Senator O'NEILL:** As a senator for New South Wales, can I just clarify something. You indicate that you're the peak employer representative; how many businesses are there in South Australia?

**Mr McKenna:** There are about 140,000 in total and about 50,000 employing businesses. We have the most business members of any business membership association in South Australia, and we are the registered, formal peak entity in the Fair Work Act and a number of other pieces of legislation.

**Senator O'NEILL:** So, of the 140,000 businesses that you identify, you actually have only 3,500 members. Is that correct?

**Mr McKenna:** That's correct, but that's not uncommon for chambers of commerce across the country.

**Senator O'NEILL:** I'm not suggesting that it's uncommon. I'm just indicating that it's hardly representative of the 140,000. It's representative of 3,500.

**Mr McKenna:** But we are actually the peak employer body in the state. There's no other business membership organisation that has anywhere near—

**Senator O'NEILL:** It doesn't change the numbers, though, Mr McKenna.

**Mr McKenna:** Well, we are the most representative business membership organisation in South Australia, and I dare say that, if you asked around the country, you'd find very similar levels of penetration of membership organisations. So I don't think it's unusual.

**Senator O'NEILL:** Yes, and I know that you speak with the voice of 3,500 businesses but not 140,000 businesses. Did you participate in the government's industrial relations working group?

**Ms van der Linden:** No, we did not. The Australian Chamber of Commerce and Industry did, of which we are a member.

**Senator O'NEILL:** You indicated that you support their submission.

**Ms van der Linden:** Yes. We're a member of the Australian Chamber of Commerce and Industry. We're one of the founding members.

**Senator O'NEILL:** Did you make a submission to the working group, or did you leave that to ACCI?

**Ms van der Linden:** We left that to ACCI, yes.

**Senator O'NEILL:** Your submission states that your surveys indicate how concerned your members are about the recent Federal Court decisions in the Skene and Rossato cases, and the impact of the ongoing uncertainty in terms of the risk to their business. How widely was your survey distributed, and how many responses did you get? What data are you basing that on?

**Mr McKenna:** We're basing that on data from two of our surveys of business expectations. Again, our survey of business expectations is the most widely responded-to business survey in the state.

**Senator O'NEILL:** Great. Let's get some numbers on the record.

**Ms van der Linden:** In the June quarter there were 258 respondents, and in the December quarter there were 250.

**Senator O'NEILL:** So, when we hear your evidence, we have to remember that you're relying on 258 of 140,000 businesses when you make the claim that your very concerned members are letting you know that this needs to be addressed. Were you aware that casual employment has already nearly returned to pre-COVID levels?

**Ms van der Linden:** We are aware that there has been an increase in casual employment, yes.

**Senator O'NEILL:** Does that belie your assertion that your members are very, very worried about these court cases?

**Ms van der Linden:** I don't believe it does. The reason is that, at the moment, there's still a large degree of uncertainty for South Australian businesses. They're concerned about security, and recruiting casuals in those roles is more beneficial. I think the increase in casuals, or the hiring of casuals, over the last 12 months is actually in response to the pandemic. I don't believe that the casual definition is first and foremost on their minds when they're making that employment decision.

**Senator O'NEILL:** Yet you support the government's omnibus legislation, which is going to give the entire right of determining what a casual is to the employer. Do you support that?

**Ms van der Linden:** We support a definition which is clear.

**Senator O'NEILL:** Clarity is no good if you're sinking. Clarity is not the ultimate goal; fairness, surely, must be the goal.

**Ms van der Linden:** I think that it has clarity and fairness, in that both the employer and employee would know where their definition lies. They would know what the definition of a casual employee is.

**Senator O'NEILL:** Which leaves casuals without any say in determining what their status is. But I will can go to South Australians figures. According to your submission on behalf of your members, it has the highest rate of casual workers in the country. You oppose casual conversion initiatives, which have being the topic of some discussion already. Is this confirmation that you and your members really don't care about the problems of insecure work; you only care about any insecurity for your members?

**Ms van der Linden:** To clarify, we don't support the casual conversion that has been proposed in the bill. We are aware that, of the 122 modern awards, 111 already have casual conversion provisions. We don't support the casual conversion provisions in the bill, because they vary, they are different to, the ones that are in the awards which have been negotiated as part of the Fair Work Commission process and a Fair Work Commission decision.

**Senator O'NEILL:** Even though you support the majority of this omnibus bill, you think the government have got it wrong in key parts, and that's one of them.

**Ms van der Linden:** As our submission says, we think that, when having a look at the bill, there should be consideration of the award wording. The wording in the bill is more complex than that in the award. I think that simplicity in the system is something that all employers and employees would advocate for. We should have legislation and awards that are simple and easy to read and that we don't need lawyers to decipher, and so—

**Senator O'NEILL:** You're indicating there that, despite the government's claims that this will simplify things, you, as a representative of business, are saying that this legislation is so poorly drafted it will complicate matters for businesses in the sector.

**Ms van der Linden:** We're saying that the part of the legislation that deals with the casual conversion could be simpler and that we recommend that the inquiry have a look at the wording which is in the modern awards.



**Senator O'NEILL:** The government hasn't even been able to satisfy the business sector, and they seem to be totally focused on the big business sector. I will go to your submission. One of the concerns that has been raised but much denied by the government is in regard to the measures in schedule 2 dealing with modern awards. According to government, this will only be a temporary measure, but there's great concern that this will just be the beginning of Work Choices 2 and that all these agreements will be made and we'll be stuck with them. We heard evidence this morning that we're still stuck with awards that were approved under Work Choices—thousands and thousands of them, actually, across the country.

**Senator FARRELL:** Hundreds of thousands.

**Senator O'NEILL:** With regard to the existing 12 awards in the bill, you've proposed an additional 11. Then, in your comments you say that that isn't even an exhaustive list and that there are many more awards that you think should get this two-year flexibility to establish an award that would continue indefinitely after that. How does that create job security and how does it support wage confidence for workers?

**Ms van der Linden:** Firstly, I just want to clarify. You say that there are hundreds of thousands of previous awards. Do you mean enterprise agreements?

**Senator FARRELL:** Enterprise bargaining agreements that are left over from Work Choices.

**Ms van der Linden:** But you're talking here about awards—the award flexibility—not agreements.

**Senator O'NEILL:** My question is in regard to your submission on awards. To be clear, the government is saying, 'Look, it's just these 12 awards and it's just two years. Don't you worry. Trust us. We're looking after your interests.' They'll go out and they'll sell it. The reality is that, as a representative of businesses in South Australia—3,500 only—you're already saying, 'Hey, we need 11 more immediately. Plus, there are a whole lot more that we want to put on.' Is this creating the thin edge of the wedge and creating insecure employment?

**Ms van der Linden:** Just to be clear, this deals with awards, not enterprise agreements, which you mentioned previously—and I'm happy to discuss that as a separate topic. In regard to the awards, we believe that these will give a two-year flexibility, which is needed to come out of the pandemic. We do not believe that this is the beginning of Work Choices 2.0. We support these as flexibilities to ensure that businesses have the ability and the flexibility to deal with any insecurities that may arise coming out of the pandemic. South Australia could go into another lockdown tomorrow. There are also industries that are significantly suffering. Now, in relation to—

**Senator O'NEILL:** Have you put these recommendations of yours for additional awards—the 11 that you've specified already, before the legislation has even passed—to the government, and have they indicated support for your position? They are supposed to be the party looking after big businesses.

**CHAIR:** Senator O'Neill, that'll be your final question because I need to go to Senator Patrick.

**Ms van der Linden:** We've put the recommendation in our submission. In response to your question about the additional—

**Senator O'NEILL:** Have you spoken to the government? Have they supported this? Have they given you any indication that they'll support your submission?

**Ms van der Linden:** No, I'm not aware.

**Mr McKenna:** We're going through the inquiry process, like everyone else here, and putting forward our evidence submission to the government as to what is in the best interests of our members and the broader South Australian community and economy.

**Senator O'NEILL:** And you haven't had any response from the government to your suggestions yet?

**Mr McKenna:** We have only made our submission to the inquiry. We haven't made a separate submission to the government, so we haven't any indirect or other feedback.

**Ms van der Linden:** Submissions were only due on Friday, so we got them in on Friday. To respond to the second half of your question in regard to additional awards: if you look at the Australian chamber submission, there were additional awards that we didn't include. We didn't include them because they're not relevant to the environment here in South Australia. An example is the alpine award. We don't have any ski resorts in South Australia, so it would be ridiculous for us to be adding that to our list. Our comment is more that these are the ones that we believe—that our members have indicated to us—are industries in distress. We respond to the information that our members provide to us, but we are saying that this might not be an exhaustive list; there might be industries throughout Australia that we don't represent that might still want to be considered.

**CHAIR:** I'll need to go to Senator Patrick now.

**Senator PATRICK:** I just want to look at this from a high-level perspective. I'm down in the weeds, talking with parties on a face-to-face basis—both on the business side and on the union side, as well as with the government. At the very top level, it seems to me that there's a focus on industrial relations that might be tweaking at the edges. I look at, for example, a rising stock market—we're almost back to where we were at the start of last year in terms of the ASX 200, so that's reflective of profits and success in the business sector—versus something like the wage price index, which, over the last eight years, has fallen. It would seem to me that, looking at the very top-level data, businesses are doing okay. If I look at the wage price index, individuals are not doing so well. You can see where I'm going with this. I'm wondering if you could perhaps present a counterargument.

**Mr McKenna:** I think it's always difficult to make direct comparisons, particularly when you're talking about the value of the stock market. If you look at the US, they're also at record highs, and they went through the tumultuous period that was 2020 while having the highest penetration of COVID in the world. That is an indicator, but it's not necessarily the indicator of how well, in general, businesses are doing on the ground.

The other aspect to all this, as we were pointing out earlier, is that we are far from out of the pandemic period. We are still subject to the potential of outbreaks and future restrictions, however they might impact South Australia. Our push on this bill is also about ensuring that our businesses are positioned to be able to respond to future outbreaks. All along, Business SA has been very clear about accepting the health advice. We have a very strong relationship with SA Health. Yes, we have contested at some points how long some restrictions have stayed in place, when there has been evidence that we are in a position to move forward. But we've always had strong regard for the health advice, and we don't see that changing. We need to, as a business community, back our Chief Public Health Officer and our governments to make those decisions—but, equally, we need to know that our businesses and their employees are going to be looked after in the event that they must follow that health advice.

**Senator PATRICK:** That's the bit where I have difficulty. In your opening statement, you talked about economic prosperity being shared amongst employers and employees. The wage price index disputes that that is occurring. Even setting aside COVID, there's a trend of increasing value in companies and lower wages.

**Mr McKenna:** If we go back over the past 10 years, every Fair Work Commission minimum wage decision has been well in excess of CPI, as a benchmark. There will always be—

**Senator PATRICK:** Are you saying the wage price index is the wrong measure for me to look at?

**Mr McKenna:** There are a number of measures. You did bring up the stock market, and, again, there is a lot of speculation in the stock market. We've seen what some US speculators have done with certain Australian stocks in terms of the shorting and so forth. From our perspective, we don't see that as being a strong link.

If we go back to the company tax arguments of three or four years ago, the point was made that, if we cut company tax, should that be linked to a rise in wages? It's not so direct, because that would also mean that, if a company makes a loss, somehow that wage rise goes in the other direction, which I don't think a lot of employees would be willing to accept. There are a number of factors, and you've pointed out a couple, but we believe there are a number of other factors that are playing into why our members and the broader business community need some continued flexibility. But we take your point that there has been a reasonable degree of economic recovery. We are talking about a more narrow portion of businesses that are suffering in an ongoing sense, but then again a future outbreak, as we experienced in SA only a couple of months ago, can literally shut down the whole state, so it's not just tourism or events.

**Senator PATRICK:** Perhaps I'll go to some of those other factors. I note that this morning there were indications from the Labor Party that IR is going to be the battleground at the next election. Is it second order? Do we focus on investment and education? Do we focus on development of IP? Do we focus on the government assisting in terms of value-adding here in Australia? Do we focus on export? These are things that have a direct effect on business and don't seem to be being addressed. I wonder if we're looking at the wrong patch.

**Mr McKenna:** I think you're absolutely right in that we need to be aspirational. I don't think IR reform is aspirational; it's a critical enabler of what business needs to do. But you're absolutely right in that it is not just about IR reform. From a chamber of commerce perspective, our view of what needs to be done across government is always much broader than just IR reform, so we absolutely take that point.

**Ms van der Linden:** Senator, I think there's also a perception that these IR reforms are blanket reforms across every business in Australia, and they're not. If you look the award changes or if you look at the proposed enterprise agreements, a lot of these reforms are there for businesses that are suffering. Not every business is going to be able to access those provisions. There are safety nets in place to ensure that the provisions are only

there for the businesses that are suffering and the businesses that need it the most. They're the ones that we're trying to assist and lift up.

**Senator PATRICK:** But, again, you've got things like JobKeeper, where there's direct support and where there's absolutely no question as to the positive effect it has on a business that's struggling, whereas, in some sense, this is quite low order. You're after flexibility and so forth but perhaps the better remedy is to better target JobKeeper against those businesses that actually did need it as opposed to ones that took it when they shouldn't have.

**Mr McKenna:** It's not just about flexibility; it's about certainty. I think a bit part of the casual piece within this bill is about providing certainty to employers—

**Senator PATRICK:** But what about employees? Do we not have to respect certainty in terms of employees?

**Mr McKenna:** We want there to be certainty for someone to create a job in the first instance. We primarily represent the employers. We want them to have the certainty and the confidence to create that job in the first instance. That is our primary lens, being a chamber of commerce.

**Ms van der Linden:** In regard to casuals, having a 'casual' definition does provide certainty but there's also the casual conversion within the bill as well. So, although we don't necessarily agree with the wording of the casual conversion in the bill, the casual conversion will provide certainty, in that the casuals can apply for casual conversion after 12 months if they're regular and systematic.

**Senator PATRICK:** On my read of the legislation, it's actually, in some sense, only discretionary, in that it is possible for the employer to simply say no, and there is no arbitration process. In some sense, you deal someone up with a shallow glass; there's not really something there for them to drink.

**Ms van der Linden:** The arbitration there is by agreement. Those provisions for arbitration by agreement are the same provisions that are contained in the model clauses in the Fair Work Act which came about from a Fair Work Commission decision, a full-bench commission decision. And as far as we're aware there haven't been any issues around the arbitration process for casual employees.

**Senator PATRICK:** I get that, if there's some controversy that needs to be resolved in terms of should someone be made permanent or not, there's always going to be that possibility. I just don't understand why, in those circumstances where people can't work it out, you wouldn't accept that going to arbitration by an independent body is actually a reasonable thing to do.

**Ms van der Linden:** If it's a reasonable thing to do. If there is agreement to go to arbitration then there is the ability to go to arbitration, and there are also dispute—

**Senator PATRICK:** But there's a veto right, isn't there?

**Senator WALSH:** The employer has to agree.

**Ms van der Linden:** The employer has to agree, yes.

**Senator PATRICK:** So, in effect, it is a veto right. It's not—

**Ms van der Linden:** As I said, these are the same rules which have been in place since 2017 through the modern award system, and we haven't seen a major systematic breakdown in the casual conversion system in the last three or four years.

**Senator O'NEILL:** Have you seen a major increase in people getting that conversion?

**Ms van der Linden:** I actually have some statistics from our members on casual conversion, if you'd like me to go through those?

**Senator O'NEILL:** Senators?

**Senator PATRICK:** I've actually finished with my questioning—

**Senator O'NEILL:** Let's take it on notice.

**Senator WALSH:** Are you able to provide a guarantee to the people of South Australia that the changes which you support in this bill won't cut their pay?

**Mr McKenna:** What we can do is guarantee that if employers don't get these types of flexibilities then there are more likely to be job losses. That's what we can guarantee. That's our focus: to ensure that our members have the requisite flexibility that they need to move through the pandemic recovery period, to ensure—

**Senator WALSH:** Including the flexibility to cut pay?

**Ms van der Linden:** In what circumstances?

**Senator WALSH:** Well, it's really my question for you. Can you guarantee that the changes you support won't cut people's pay? It's a simple question

**Mr McKenna:** When you say 'cut people's pay', in the terms of a company revising an enterprise agreement in order to stay in operation due to the pandemic, I would have thought that's about protecting as many jobs as possible. So if that comes down to protecting pay or as many jobs as possible—

**Senator WALSH:** I just want to get on the record whether you accept that people's pay can be cut by these provisions?

**Mr McKenna:** We accept—

**Senator WALSH:** Can you guarantee that it won't happen?

**CHAIR:** Senator Walsh, the witness is answering the question—

**Senator WALSH:** A different question—

**CHAIR:** No. The witness is answering. The question has been put by you and I think you should let the witness respond to your question. Once they've done that, I'll be going to Senator O'Sullivan.

**Senator WALSH:** I really would like an answer to the question, which is: can you guarantee that the provisions you support won't result in people getting a pay cut? Don't the people of South Australia deserve an answer to that question?

**CHAIR:** Senator Walsh, the witness is answering the question and explaining their position in relation to—

**Senator WALSH:** Now you're answering the question for the witnesses!

**CHAIR:** the question that has been put to the witness. Let the witness answer the question, please, without interruption.

**Mr McKenna:** Yes. Our guarantee is that our members will be worse off if they don't have—

**Senator WALSH:** That's not answering the question!

**Mr McKenna:** the flexibility—

**CHAIR:** Can we let the witness—

**Mr McKenna:** They'll be worse off in that they won't be able to maintain employment and jobs. You're concerned about employees having wages cut; we're concerned about our employers being able to retain jobs. Fundamentally, I think that's what this bill is about; ensuring—

**Senator WALSH:** Do you think that employers need to be able to cut workers' pay to retain jobs?

**CHAIR:** I'm not going to—

**Mr McKenna:** This isn't—

**CHAIR:** Sorry, Mr McKenna. Can we please let the witness answer the question! You may not be happy with the answer that is given to you by the witness but the witness is actually answering the question. Mr McKenna.

**Senator WALSH:** I really think that people deserve to know whether their pay can be cut—

**Mr McKenna:** They deserve some—

**Senator WALSH:** and whether you can guarantee that won't happen.

**Mr McKenna:** It's not as simple as that, with all due respect, Senator, and I think you know that. I think we've had repeated questions all around the country of similar business representative groups on this exact topic. It may be great in order for you to try to score some points out of this but, realistically—

**Senator WALSH:** People deserve to know whether their pay can be cut—

**Mr McKenna:** are you really concerned about those employees retaining jobs?

**Senator O'NEILL:** Yes, because they've got to feed their kids and they've got to keep a roof over their heads!

**CHAIR:** Senator O'Neill!

**Senator O'NEILL:** Are they going to get a pay cut or not?

**Mr McKenna:** We're actually—

**CHAIR:** Can we have order, please!

**Senator O'NEILL:** Mr McKenna, will you please answer?

**CHAIR:** Senator O'Neill! The witness has answered the question and I'm now going to throw the call to Senator O'Sullivan.

**Senator O'SULLIVAN:** Thank you very much, Chair. How concerned is the chamber and your members about the potential double-dipping claims for the National Employment Standards entitlements for casual employees?

**Ms van der Linden:** Thank you for your question, Senator. Businesses are concerned about it. They're concerned about the uncertainty that it provides. There are a number of businesses that have contacted us, especially around the times of the Skene and Rossato decisions, that were concerned about the potential liabilities within their businesses and, if they did need to pay, in addition to having already paid the casual loading, the effect that would have on their bottom line and the effect that would have on jobs within that workplace as well. There could be a significant impact on some businesses if they have a number of employees. That's why the definition is important. It's also why it's important to ensure that the double-dipping isn't possible.

**Senator O'SULLIVAN:** So you've received legal advice on that, have you?

**Ms van der Linden:** Business SA has not received legal advice on it, no. We are part of the Australian chamber, as we indicated previously, and we've worked with the Australian chamber and other employer groups. Whilst the Rossato and Skene decisions were in the mining industry, to be honest there is very differing legal advice as to whether or not that will apply broadly, which just brings even more insecurity for businesses not knowing.

**Senator O'SULLIVAN:** It's the uncertainty of it that really drives decisions about hiring and expansion and all of that?

**Ms van der Linden:** Absolutely. If there's one thing that businesses want, it's simplicity and confidence that they're able to do business and do it correctly. Our members don't go out of their way to do the wrong thing by employees by any means. Many of the people who have hired casuals and do hire them regularly and systematically have done so believing that they're casual employees and of course pay them a 25 per cent loading. So the idea that the casual employee can then come back and request annual leave, sick leave and other entitlements makes the business community very fearful.

**Senator O'SULLIVAN:** So you're pleased to see that this forms part of the bill—some clarification around this?

**Ms van der Linden:** Yes, we are. We would like to see these provisions passed.

**Senator O'SULLIVAN:** What are the benefits for small businesses in the provisions of this bill?

**Ms van der Linden:** We've already discussed the casual provisions a fair bit. I think that the flexibility in the awards for the post-pandemic recovery are very important. A lot of small businesses are still suffering here in South Australia. Larger businesses can tend to be a little bit more flexible with their workforce and their workers—where they work from and those kinds of things—and potentially may have already negotiated enterprise agreements. Smaller businesses who rely on the awards are the ones who are going to benefit the most and benefit the most coming out of the pandemic. So I think that the award flexibility is extremely important as far as these provisions go.

**Senator O'SULLIVAN:** We know that small businesses do a lot of the heavy lifting in the economy. What do you see as being the effect of the collapse of the manufacturing sector on the South Australian economy?

**Mr McKenna:** It's an interesting question because unfortunately we did lose our major auto manufacturers. But there is still quite a bit of niche—

**Senator FARRELL:** You didn't lose them; they were pushed out of the country by this government.

**Mr McKenna:** We are going a bit off-topic with this—

**CHAIR:** Senator Farrell.

**Senator O'NEILL:** They were driven offshore.

**CHAIR:** Senator O'Neill and Senator Farrell, can everybody just—

**Senator FARRELL:** The government abandoned the industry. It's a disgrace.

**CHAIR:** Deep breaths.

**Senator O'SULLIVAN:** Chair, if I may—

**Senator FARRELL:** It's shocking.

**CHAIR:** Deep breaths. Just let the witness answer the question, please.

**Senator O'SULLIVAN:** Chair, if I may, on teleconference it is very difficult to hear the witness when there are interruptions.

**CHAIR:** I apologise on behalf of the Labor Party senators for their constant interruptions.

**Senator O'NEILL:** Don't apologise for me.

**CHAIR:** Mr McKenna, could you perhaps start your answer again, please.

**Mr McKenna:** In respect of the changing landscape of manufacturing in South Australia, South Australia no longer has major auto manufacturing but we have some major defence projects, particularly over the next 10, 20 or 30 years, that are really starting to underpin the diversity in our economy. We also have a lot of niche manufacturing left in South Australia. They may not employ the 1,000-plus that the OEMs did, but there are a lot of these niche manufacturers. A lot of these manufacturers are Business SA members, and we do like to highlight that. Manufacturing is not gone from South Australia. It's a more diverse landscape. Those manufacturers have niches in global markets and they are sustainably competitive in a lot more respects because they're not relying on government subsidies.

**Senator O'SULLIVAN:** Can any provisions of the National Employment Standards be challenged through arbitration?

**Ms van der Linden:** Not that I'm aware of. I'd have to check on that.

**Senator O'SULLIVAN:** Is there a remedy through conciliation in the courts at all?

**Ms van der Linden:** If there has been a breach of the National Employment Standards then the employee will have remedy through the Fair Work Commission or through the Fair Work Ombudsman. If they are a higher-level employee then there might actually be a contractual issue as well. But, yes, there are remedies for the National Employment Standards. If an employer doesn't do the right thing by the National Employment Standards then it is a breach of the Fair Work Act, and there are civil penalties for breaches of the Fair Work Act.

**Senator O'SULLIVAN:** Do you see the provisions in this bill providing a greater avenue for that?

**Ms van der Linden:** Not a greater avenue. I'd say that they complement what's already there. I'm not sure I understand the question. Do the provisions provide a greater avenue for arbitration?

**Senator O'SULLIVAN:** Yes, and, if parties are not satisfied, is there provision in the bill to enable for arbitration, for independents to be able to look at it?

**Ms van der Linden:** Absolutely. I think that, if an employer has breached the Fair Work Act, then there is the ability, through the Fair Work Ombudsman or the Fair Work Commission, for an employee to challenge that. If we're looking at a casual employee who, for example, is not a casual employee but that has been in a contract, that is no different to somebody being employed as a level 1 under the hospitality award, for example, when they're actually level 3. They can challenge that and say, 'I was never level 1; I was serving drinks; I was doing higher-level work.' So there is the ability for employees and there is recourse for employees through the Fair Work Act and the Fair Work Commission.

**CHAIR:** I think that concludes our questioning, so I'd like to thank you. You are released.

**Proceedings suspended from 12:52 to 13:46**

**MOSS, Mr Paul, Principal Workplace Relations Advocate, Chamber of Commerce and Industry of Western Australia [by audio link]**

**CHAIR:** Welcome. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I invite you to make a short opening statement, and at the conclusion of your remarks I will invite members of the committee to ask questions.

**Mr Moss:** CCIWA would like to thank the committee for providing us with this opportunity to participate in the inquiry. In response to the COVID-19 pandemic, 84 per cent of our members sought to adapt their operations in order to respond to ensure their survival and to maintain jobs. The difficulty faced by many of these businesses in doing so was the inflexibility of the industrial relations system and its inability to quickly respond to change. The bill addresses some of these issues.

As identified in our written submission, we support the passage of part 1-4 of the bill in order to provide greater certainty regarding employment for casual workers; provide greater flexibility for those industries most affected by the COVID-19 pandemic; promote the use of enterprise agreements by providing greater flexibility, making the system easier to navigate; and support the option of greenfields agreements, which play a significant role in promoting investment in the construction of major resource and infrastructure projects within Australia. Based on our involvement in the greenfields working group, we appreciate the bill takes into consideration issues raised by both employers and union representatives.

Turning to the greenfields agreements, major projects in the resource and infrastructure sector provide well-paying job opportunities for employees during the construction phase in addition to long-term benefits to the economy as a whole once they become operational through ongoing royalties, which allow the government to fund essential services. The challenge for Australia is ensuring that we are able to attract the investment necessary to secure major projects, particularly within the resource sector. The presence of suitable resources doesn't guarantee that investment will occur. Competition for investment dollars is high, and we need to consider how we can make investments based in Australia less risky.

One of these risks is the inability to negotiate terms and conditions of employment for the duration of a project. Allowing greenfields agreements to operate for the construction phase of major projects, up to a maximum of eight years, will reduce that risk. Ultimately, in order to make a greenfields agreement, employers need to reach agreement with the relevant unions that represent the majority of employees who will be covered. This is no simple task. Unions can choose not to agree to the terms of proposed agreements, providing them with significant bargaining leverage. Since their introduction, unions have demonstrated their capacity to negotiate greenfields agreements which are favourable to themselves and their members. The reality is that these projects provide well-paying jobs with employment conditions designed to attract and retain a skilled and highly mobile workforce. This bill will not diminish this; rather, it should increase the availability of these jobs. That is the conclusion of our opening remarks.

**CHAIR:** Thank you, Mr Moss. I will hand over to Labor Senator O'Neill to commence questioning.

**Senator O'NEILL:** Thank you, Mr Moss. Could you tell us how many members you have in the Chamber of Commerce and Industry of Western Australia?

**Mr Moss:** Yes. We currently have approximately 9,000 members, made up of businesses across all industry sectors. The majority of our members sit in the small to medium sized category.

**Senator O'NEILL:** How many businesses are there in Western Australia?

**Mr Moss:** That I don't have to hand, but I can provide that if required.

**Senator O'NEILL:** That would be very helpful, but it's safe to say that there are substantially more than 9,000 businesses in Western Australia, isn't it?

**Mr Moss:** Of course, yes.

**Senator O'NEILL:** So you represent a part of the business community. Did you just articulate that the majority of your members are small businesses?

**Mr Moss:** Yes, they are.

**Senator O'NEILL:** Would you be able to provide us with a bit of a profile of the big businesses?

**Mr Moss:** They do cross all industry sectors. We have larger employers sitting in the manufacturing, building and construction, resource, not-for-profit sectors as well as government-run entities.

**Senator O'NEILL:** Did you participate in the government's industrial relations working groups?

**Mr Moss:** Yes. We participated as the ACCI adviser on the greenfields working group.

**Senator O'NEILL:** Did you make a submission to the working group?

**Mr Moss:** Not a submission to the working group in a formal aspect. We were a direct participant as part of the working group, so we were actively involved in those discussions.

**Senator O'NEILL:** We might have some questions about greenfields to you, if there is sufficient time. Can I go back to a significant change that happened in terms of penalty rate cuts that occurred. At that time—I'm sure you know the period of time I am talking about; is that right?

**Mr Moss:** That's correct, yes.

**Senator O'NEILL:** Did your organisation support the cuts to penalty rates that occurred several years ago?

**Mr Moss:** We filed submissions to the Fair Work Commission in support of reconsidering the penalty rates within the retail and hospitality sector.

**Senator O'NEILL:** So you've supported the cuts to penalty rates?

**Mr Moss:** Yes, we did.

**Senator O'NEILL:** One of the arguments that was put at that time was that a cut to penalty rates would supposedly create a flurry of employment opportunities, would actually create jobs. Exactly how many jobs in Western Australia were created by those cuts to penalty rates that your organisation supported?

**Mr Moss:** I can't provide a response to that question. That's something that would need to be provided on notice.

**Senator O'NEILL:** That was the claim, wasn't it? From this cut to penalty rates, which affected people's take-home pay, their capacity to live, their capacity to support their families and their capacity to support other local businesses where they weren't employed but were actually customers, it was widely claimed that there would be a massive increase in jobs. If what you said had been true, I would expect that you would have felt a wave of improved employment across the state, yet you can't point to those numbers.

**Mr Moss:** One of the things we identified very clearly in our submission—and this was premised very much on the information provided by a lot of our small members in particular—was that they were restricted in trading on Sundays in particular. The business owners were spending more time in their business and giving less work to their employees, or they were reducing the service provided on Sundays. The variation to the Sunday penalty rates therefore allows them to open up and provide those additional hours—

**Senator O'NEILL:** I think that's a very accurate statement of what the claim was. My question goes to the claim being made. If it was a resounding success—the government certainly bought what you were selling—if that claim had in fact stood up, I would think it would be pretty clear how many additional jobs were created. Can no-one assist you with giving me that information: how many additional jobs were created from the cut in take-home pay when you supported a cut to penalty rates?

**Mr Moss:** I will clarify a little bit. In the first instance, it was the Fair Work Commission who, as the independent arbitrator, determined that it was appropriate to change the penalty rates. Those penalty rates changes were staggered over time. The impact of staggering them over time makes it very difficult to identify an accurate quantum of what impact it has, because there is no defining moment with which you can clearly articulate, 'On day 1 it was this, and on day 2 it was that.' If the Senate would like the opportunity [inaudible] I'm happy to do so.

**Senator O'NEILL:** What you've described is a reality—that claims can be made, but there is no holding the claimants to account for the facts of what they predicted. That's what I'm worried about with this particular piece of legislation. Have you done any calculations or surveys of your members around how many extra jobs you claim will be created by this omnibus piece of legislation from the government?

**Mr Moss:** Once again, it's hard to articulate the number of jobs that one would expect to be created. The issue that comes in is whether or not these types of changes provide greater flexibility, in particular the ability for businesses to adapt to change. I think one of the things we saw that was quite clear was the initial impact that COVID-19 had on employment and the massive drop in working hours, and how the projected drop in employment was mitigated by the provision of the JobKeeper flexibilities, which then allowed businesses to keep people employed during that particular period of time. The issue for a lot of our members, as I mentioned earlier in my statement, is that 84 per cent sought to adapt their business operations in order to continue to operate and trade whilst observing government restrictions that limited their ability to do so. The ability to quickly adapt and change and the ability to establish terms and conditions that suit that particular business and enterprise are important. The critical thing, I would note—

**Senator O'NEILL:** Mr Moss, I would put it to you that making sure Australians working in those businesses don't end up taking home less pay is also very important. Can you provide pretty clear answers to the questions



I'm about to ask you. You've indicated that, despite your support for this omnibus legislation, you cannot guarantee that this legislation will create additional jobs, haven't you?

**Mr Moss:** I think the last 12 months have demonstrated that there's no prospect of guaranteeing anything at this particular point in time. The issue here, and the way we see it, is: without this bill going forward, the one thing we can clearly understand is that some employees will be worse off as a result. You made a comment about the impact on reducing people's take-home pay and the like. If we're looking at the issue of enterprise agreements, the changes to the better off overall test will still demonstrate why all the employees are better off overall compared to the modern award. This bill isn't about reducing employees' take-home pay—it's never been that case.

**Senator O'NEILL:** But that runs counter to the evidence that we've received from experts with regard to the BOOT. In fact, overwhelmingly, the evidence to this committee is that employees—people working, who need those wages—will be worse off overall. Can you guarantee that the only thing that this legislation will absolutely make possible is a cut to the working conditions and pay of Australians?

**Mr Moss:** It's not our view that the bill will result in the cutting of employees' terms and working conditions. Our view is that, overall, it will provide benefits. I'll take the example of the agreement-making process under the Fair Work Act. There were a number of commitments made at the time that employees were better off with agreement-making under the Fair Work Act. In reality, what we've seen is a massive reduction in the number of enterprise agreements that are currently in operation. As a result of that, employees have lost that opportunity to secure wage increases through enterprise bargaining and have been very much reliant on the awards.

**Senator O'NEILL:** So the wages are under threat already, as you've described, and this legislation will increase the likelihood of a cut to pay and increase the likelihood of further insecurity in the workplace. That's not good for ordinary people who support local businesses.

**Mr Moss:** We don't believe that—we don't agree with that statement. We think it's quite the opposite, by removing the disincentive for enterprise bargaining and letting enterprise bargaining work in the way it's intended to work—and that is for the parties to negotiate terms and conditions which are appropriate to the workplace. Currently, we very much hang things on negotiating an agreement which is no different to the award. In doing so, employees don't have the opportunity to secure pay increases above the norm at the moment. And with respect to casual employees, the bill is enshrining casual conversion provisions into legislation. So we think it's actually quite the opposite. There are a number of things in the bill here which aim to support and strengthen workers' entitlements.

**Senator O'NEILL:** I have to agree with you, Mr Moss, that there's window-dressing—which I'm sure the government will sell as that—but, in fact, when you look at the detail, it does not provide any security.

**CHAIR:** I might just go to Senator Davey now.

**Senator DAVEY:** Thank you, Chair, I just have—

**Senator O'NEILL:** Senator Davey, I can hardly understand what you're saying because of distortion. Is there any way you could speak more directly into the mic?

**Senator DAVEY:** Sorry, is that better?

**Senator O'NEILL:** Much better, thank you.

**Senator DAVEY:** Mr Moss, can you please explain to what extent the changes to greenfield arrangements will help to attract investment, particularly in major projects?

**Mr Moss:** I think the main thing to note is that Australia can't take investments in resource projects for granted. There is a lot of competition globally for investment dollars and Australia needs to be able to compete for those. It's been identified by the Office of the Chief Economist that there are approximately 335 resource and energy major projects in the investment pipeline, and they're worth over \$300 billion. Not all of these projects will go ahead, for various reasons. But it is important that we do have a regulatory framework that gives these projects the best chance of progressing from the likely to the committed stage.

One of the things that we do need to recognise is how attractive Australia is for those resource projects. The international attractiveness index survey done by the Fraser Institute identifies that Western Australia, as a jurisdiction, ranks No. 1 out of 76 jurisdictions on our geographical desirability—that is, we have very attractive resources on offer. But when you factor in the policy factors, WA's ranking falls down to No. 5. When you are considering the attractiveness of Australia as a destination for investment decisions, there are a number of policy factors which are taken into consideration, and industrial relations is a significant one of those.

During the greenfields working group, considerable attention was given to the impact of the IR environment on project investment decisions. That was not the only factor. The inability to fix labour costs for the duration of longer-term projects is a significant factor that's taken into consideration when considering investing in Australia compared to other developed countries. It's a liability that we have that our competitors don't. Given the costs of these projects, a significant focus is given to the risks and how those risks can be managed. Currently, for smaller projects which last less than four years, we can manage this risk through greenfields and other forms of agreements that will allow us to establish the terms and conditions for that project for the duration of that. The issue here is that we can't do that for larger projects, and this does act as a disincentive. It's a factor that can be reasonably easily addressed, and this bill does do that.

**Senator DAVEY:** When we are talking about the larger projects, what sort of time frame is there? One of the things that is raised is: there is a belief that this would lock people into a stagnant wage rate for an indefinite period of time. But what are we actually talking about here?

**Mr Moss:** I suppose, when we are looking at the length of projects, there is an element of, 'How long is a length of string?' but there are a number of projects which do go beyond the four-year aspect. They may run for six or seven years—possibly even longer. They are the minority of projects, but they are very important projects nonetheless. The issue about stagnant wage rates and the argument that there won't be wage rates or wage rates will be minuscule is really quite mischievous and ignores the reality. First of all, a key component or one of the safeguards which sits in this bill is that, firstly, there must be a wage increase, and, secondly and most importantly, greenfields agreements are predominantly agreements which are made with unions. Unions sit in the driving seat in this. We need to get agreement with unions in order to have an agreement. We need to be able to reach agreement with the unions on the wages and the conditions, what wage rates will be provided and how long the agreement will last for. Unions are well versed in being able to negotiate terms which are favourable to their members in this respect, and they have good bargaining leverage through the greenfields approach. That bargaining leverage will actually increase with the increased length of agreements as well.

**Senator DAVEY:** So there's nothing in the legislation that gives businesses or project proponents a final say in just slamming down a greenfields agreement and saying, 'You must sign here.' It has got to have been negotiated in conjunction with the unions?

**Mr Moss:** Yes. Really, there's no ability for the employer to dictate this. The predominant way of doing a greenfields agreement will be reaching agreement with the unions that represent the majority of the workers, and that gives the unions quite a significant controlling element. There was a 2015 amendment to the act which allows, after six months of negotiation, the seeking of an agreement through the Fair Work Commission. But even then employers don't have the final say, because the commission must be satisfied that the terms and conditions in that agreement are in line with the prevailing industry standard.

First of all I'll note that no agreements have been made under that provision in five years, and the reality of an agreement being made under those provisions is actually really low. But even if one was, then the yardstick for those agreements will be the union-negotiated greenfields agreements which are the agreements that are currently in operation for all projects of that nature. At no point does the employer have the ability to dictate the terms. These will be terms we could negotiate and agree upon with the relevant unions.

**Senator DAVEY:** Do you think the proposed changes will help drive our jobs recovery across the sector?

**Mr Moss:** Yes, because for those longer-term projects it will help mitigate that risk. In making these investment decisions, resource companies and their investors are focused on risk minimisation and mitigation. This gives them certainty that they can establish up-front what the terms and conditions of employment will be for the duration of that project, up to eight years of course, and quite frequently probably less based on how the unions may negotiate what that term will be. It helps give them certainty and therefore gives them more comfort in investing in Australia as distinct from investing somewhere else in the world. But there's lots of competition for investment dollars. There are more resource projects that could be entered into than there are investment dollars to support them, and we need to be in the best possible position to do so.

**Senator DAVEY:** More broadly speaking, will the proposed changes to enterprise bargaining also help in that? And do you have a comment about that?

**Mr Moss:** The changes to enterprise bargaining, generally speaking, are probably less relevant for major projects, but certainly the terms and conditions of employment that are established for agreements applying to major projects are way and above what one would ever expect to be paid under the award. There's never any question that these employees are exceedingly well paid. The flexibility with the changes to the agreement-making process, particularly for smaller businesses, is that simplifying the requirements for approving the

agreement will mean that medium-size businesses in particular will have a greater capacity to successfully negotiate an agreement with their employees. And requiring the commission, quite sensibly, to look at existing working patterns and reasonably foreseeable working patterns as distinct from hypothetical working patterns will really ground that decision, based in reality, to look at what's going on in the business and what's likely to go on in the business and assessing whether employees are better off overall compared with the reality of the situation. It's the hypotheticals that really tie the commission up in preventing any form of flexibility.

**Senator DAVEY:** That's a really interesting point that you raise. Most of the people who raise concerns about whether the BOOT test works or doesn't work—it's all about wages. But you kind of alluded to the fact that it's about the entirety of the agreement, being wages and conditions, and the whole broad range of the agreement. So, it's your belief that the changes being proposed will actually enable people to be better off when you expand the better-off-overall viewpoint to the whole package?

**Mr Moss:** Yes, and that's really where the better off overall test was originally designed to be—that you were looking at whether employees are better off overall as a total package, not focusing on a line-by-line assessment. How does the overtime compare with the overtime? How does the wage rate compare with the wage rate? How does this penalty look compared with that penalty?

It's designed to be focused on the overall package. To be honest, these changes are taking us to the way in which the better off overall test was originally dealt with by the commission when the Fair Work Act was first introduced, before we started having things like the Federal Court One Key decision and the like, which have moved us to a much more prescriptive application of the BOOT. It's moving us back to what it was originally intended for in the way it originally operated when the Fair Work Act was introduced.

**Senator DAVEY:** Thank you very much.

**Senator WALSH:** Mr Moss, would you agree that one of the foundations of the Fair Work system, now and into the future, is that employers need to give their workforce accurate information about their pay and conditions and accurate information about any proposed changes?

**Mr Moss:** Sorry, just to clarify: is this in relation to enterprise agreements?

**Senator WALSH:** No, just as a general principle. Do you think employers need to give workers accurate information? It's not a trick question, I promise. It's just a yes or no: do employers need to give their workers accurate information?

**Mr Moss:** Yes, so, when it comes to information sources for employees there are a variety of sources: the employer, unions, the Fair Work Ombudsman and the like. But it's important that when employees need the right information that it is, to the extent that it can be, accurate. One of the difficulties we face—

**Senator WALSH:** Thank you, Mr Moss. I just want to go over a couple of things that you've said in representing employers in WA. One of the things you've just said is that employers won't be able to take eight-year greenfields agreements without union support. That's incorrect, isn't it, because it's true that under these changes employers will be able to take eight-year greenfields agreements, without union or worker agreement, direct to the Fair Work Commission and implement them?

**Mr Moss:** Yes, if you probably look back at the transcript later on you'll see that I identified that in 2015 there were some amendments made to the Fair Work Act which allowed for six months of negotiation for employers to put an agreement to the Fair Work Commission. But, in response to the question—the question was whether or not the employer could dictate terms unilaterally—I identified that, in the first instance, the Fair Work Commission must be satisfied that the terms and conditions meet a prevailing industry test, which is that the terms and conditions overall are no less favourable, or are in line with, what's happening in the industry generally. The benchmark for that will of course be other union greenfields agreements. I also identified that those provisions haven't been used since 2015, and that signifies—

**Senator WALSH:** I'm really sorry to interrupt, but here in the room the chair is trying to keep us to a tight time frame. Is it true that eight-year greenfields agreements could be implemented without union support?

**Mr Moss:** I've just provided you with a response to that question, so I'd perhaps refer you to that.

**CHAIR:** One more question, Senator Walsh, and then we need to move on please.

**Senator WALSH:** I think, actually, this is a really important question. Mr Moss, in your evidence to us today and in your submission, at point 89, you say that the bill 'will continue to require that all employees are better off', when in fact one of the key purposes of the bill is to suspend the BOOT test and allow employers to implement enterprise agreements that go below the award. Is that true, or do you dispute that basic fact?

**Mr Moss:** Okay, so you're referring there to the ability under the current Fair Work Act. Currently, the Fair Work Act allows for the Fair Work Commission to approve an agreement that fails the better off overall test where it is in the public interest to do so. This is a fairly longstanding provision that's been around in previous legislation as well. The bill amends that slightly to identify that COVID-19 is a ground the commission can take into consideration for using that limited exemption. I don't think it's fair to say that that's the purpose of the bill. It's a part of the bill; it's not the purpose of the bill. And those provisions are very, very rarely utilised. So by and large—

**Senator WALSH:** I go back to the question. Do the changes—

**CHAIR:** Senator Walsh—

**Senator WALSH:** I just want an answer to the question. Do the changes to the BOOT test—

**CHAIR:** Mr Moss is answering the question.

**Senator WALSH:** have the capacity for employers to pay workers less than the award?

**Mr Moss:** I think it's important to recognise that the bill currently provides that right—not that right; it provides that option.

**Senator WALSH:** Does it make it easier—

**CHAIR:** What we're going to do now—

**Senator WALSH:** Does it expand the ability of the employers—

**CHAIR:** Order!

**Senator WALSH:** to pay—

**CHAIR:** Order! I think the witness has answered the question.

**Senator WALSH:** I think he said yes to it.

**CHAIR:** I don't think you should put words in the witness's mouth in terms of his response—

*Senator Walsh interjecting—*

**CHAIR:** Could we please have order. Mr Moss, that concludes your evidence here today. Thank you very much. You are released.

**CAMERON, Mr Charles, Chief Executive Officer, Recruitment, Consulting and Staffing Association of Australia and New Zealand [by audio link]**

**LORD, Ms Brooke, Head of Advocacy and Policy, Recruitment, Consulting and Staffing Association of Australia and New Zealand [by audio link]**

**WALTON, Ms Jodi, Board Member, Recruitment, Consulting and Staffing Association of Australia and New Zealand [by audio link]**

14:21]

**CHAIR:** I now welcome the Recruitment, Consulting and Staffing Association, who are appearing via teleconference. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Do you have any comments to make on the capacity in which you are appearing?

**Ms Walton:** I also chair the local RCSA council in South Australia.

**CHAIR:** I now invite one of you to make a short opening statement. At the conclusion of your remarks, I will invite members of the committee to ask questions.

**Mr Cameron:** I will commence. I want to thank you and the committee for the opportunity to provide our evidence today. Unfortunately, due to the COVID restrictions, we couldn't be there in person, which would have been our preference. As mentioned, Jodi Walton is with us today. Jodi is also an owner and manager of a small to medium-sized staffing firm in Adelaide and so can assist the committee with any particular inquiries about operational matters if they arise.

In short, RCSA is the peak industry body for the recruitment of staffing industry. Recruitment of staffing includes permanent placement recruitment, where you find and place a candidate which the client will employ directly; and on-hire employee services, as it's known under the awards, which can be anything from blue-collar labour hire to white-collar temp agency work through to, at the executive level, what is described as professional contracting. We can go into a bit more detail on that if required, because we do believe that precision about and understanding of our industry is very important. Quite often, we see individuals making commentary on our industry without a full understanding of how it operates.

Our members employ thousands of internal staff. However, our primary interest today in relation to this bill pertains to what we call on-hire employees, of which there are approximately 360,000 assigned to clients in any one year. Around 20 per cent of those on-hire employees are employed on an on-hire permanent basis, which may come as some surprise to the committee as well. There's a general assumption that all labour hire workers or temp agency workers are casual employees. That's not the case, and in fact we promote on-hire permanent employment where it's suitable.

I also just want to add that it's very important to understand that the industry is not heavily dependent upon what I would describe as blue-collar or industrial sectors. Many will make this assumption, and there seems to be most commentary focused upon industries such as construction, manufacturing and resources. In fact, the truth is that 18.3 per cent on higher worker placements are into the professional, scientific and technical services industry; 17½ per cent go into finance, banking and insurance; and 10.3 per cent go into health care. Interestingly, only about 5.9 per cent are assigned into mining, energy and utilities. It's very important to understand the breadth and diversity of not only the employers that we represent today but also the employees who are given opportunities through our members.

I will cut it short, other than to say that we have played a vital role during COVID. We're very proud of the fact that during the height of the COVID pandemic, the second wave in Victoria, when our aged-care residents were most vulnerable, our members filled in excess of 25,000 shifts that were otherwise unfillable to care for our most vulnerable residents. We supplied workers into supermarkets to fill shelves. We on-hired workers into call centres to ensure that information was being provided. Many people tend to forget that it is very difficult to find a competent, reliable and compliant workforce. When I say 'compliant', I mean paid in accordance with award terms and conditions and Fair Work entitlement at short notice. So we're very proud of the role we continue to play.

We represent around 65 per cent of the on-hire worker assignments each year. However, because we represent around 750 corporate members, in our estimate—and it is difficult to determine—it probably represents only around 10 per cent of the total number of companies that operate in this segment. To that extent, we are interested primarily in the provisions relating to casual employment in this bill. We certainly are of the strong belief that providing certainty and, I guess, clarity around casual employment is good for job creation. A significant number

of on-hire casual employees convert and become permanent employees, and we see ourselves as having a very critical function to ensure labour market efficiency.

**Senator O'NEILL:** Thank you for the outline of the shape of your constituency that you're putting forward a view for today. I believe you made a late submission to the inquiry. Is that correct?

**Mr Cameron:** That is correct.

**Senator O'NEILL:** It came in on Monday. We've been in transit since then, so I'm going to put on the record that I haven't had a chance to read that submission at this point in time. But I am very keen to hear about the sector that you represent. Most people around the country would call your sector labour hire, really. Is that what you would say it's normally known as?

**Mr Cameron:** It's a good point you raise, because it's actually really unhelpful to describe our industry purely as labour hire. Labour hire is a term that is more commonly used in manufacturing and construction. As I mentioned earlier, the large majority of on-hire employees in Australia operate in white-collar, pink-collar and professional segments of the market.

**Senator O'NEILL:** I will look at your submission to see whether you've got that embedded in it. If not, could I ask you on notice to provide the shape of the sector? Your members are 750, and that is 10 per cent of the labour hire sector. Is that correct?

**Mr Cameron:** That's our estimate, yes.

**Senator O'NEILL:** Thank you very much. Is WorkPac one of your members?

**Mr Cameron:** Yes, they are a member of ours.

**Senator O'NEILL:** Did you participate in the government's industrial relations working group?

**Mr Cameron:** We didn't participate directly. We are a member of the Australian Chamber of Commerce and Industry, so we had an indirect input by their representation.

**Senator O'NEILL:** Did you make a submission directly to the industrial relations working group?

**Mr Cameron:** We didn't make a submission directly. One of our members, Programmed Skilled Workforce—the managing director, Nic Fairbank—made a representation directly as a special witness.

**Senator O'NEILL:** Did you contribute to the ACCI submission?

**Mr Cameron:** We certainly contributed. ACCI have a large number of industry association members. So, yes, we did. But it would be argued that it was somewhat diluted by the broad representation ACCI has.

**Senator O'NEILL:** We've had evidence today that unions and employers worked in good faith in the initial consultations that the government facilitated but that this legislation before us, this big omnibus bill, doesn't actually meet any of the consensus that was achieved in those. I'm just keen to see what was the area of most concern to your industry within the five parameters that were set by the government when that kicked off.

**Mr Cameron:** It was casual employment. Upon speaking to representatives of ACCI once they concluded—of course, a lot of the discussion there was in confidence—we are somewhat surprised, given the good faith and what we understood along the way to be very constructive and amicable discussions. This now represented that there was very little agreement.

**Senator O'NEILL:** Amicable discussions and agreement can be two entirely different things, in my experience, Mr Cameron. Can I just go to the Australian Building and Construction Commission report of June 2020. It's not generally my happy reading, if I can put it that way. It's simply called the *Labour hire campaign report*. It was conducted at that time across 63 labour hire companies. That's the sector you represent. The background to the report stated:

The precarious nature of labour hire employment means that workers are less likely to speak up about their working conditions.

Certainly we've heard concerns about insecure workers and labour hire workers not speaking up about safety concerns and not being confident to speak up about concerns about their pay, either. Would you agree with the statement of that report—that the precarious nature of labour hire means workers are less likely to speak up?

**Mr Cameron:** I think, as is the case with any new employees and those of shorter engagement, there are certainly circumstances where individuals may not have the confidence to raise issues. This has been a position presented especially by the union movement for many, many years. I have been an expert on this industry for over 20 years, and I've always sought clarity as to where that information has been sourced. Of course, we much prefer to deal with facts rather than rhetoric and emotion.

**Senator O'NEILL:** Mr Cameron, can I just remind you that the source I'm quoting from is actually from the ABCC. That's hardly a union-infiltrated industrial group.

**CHAIR:** Senator O'Neill, could you please let Mr Cameron answer the question.

**Senator O'NEILL:** The question was: do you agree with the statement of the ABCC that 'the precarious nature of labour hire employment means that workers are less likely to speak up about their working conditions', or did the ABCC get it wrong, Mr Cameron?

**Mr Cameron:** In fact, I went and met with the ABCC commissioner himself and had a discussion with him about our concerns and sought clarity on upon what he relied to make those claims. In fact, he indicated—

**Senator O'NEILL:** So you told him he was wrong?

**Mr Cameron:** Yes, I did. I asked—

**CHAIR:** Senator O'Neill, just let the witness answer, please.

**Mr Cameron:** I had a conversation with him and I sought to understand the basis upon which he made that assertion. He said that was based upon some other reports that they had relied upon in their research rather than the direct information being provided by the actual inquiry itself.

**Senator O'NEILL:** So they were guilty of not getting the correct facts and producing a sloppy report? Is that what the ABCC is up to?

**CHAIR:** Senator O'Neill, please let the witness finish the answer before—

**Senator O'NEILL:** Before you cut me off, Chair?

**CHAIR:** No, before you interrupt.

**Mr Cameron:** From our point of view, we are always concerned that the information being relied upon is backed up with evidence and facts rather than opinion. Our concern, yes, was that this was a general opinion. More broadly, on that basis, there's a lot of opinion about labour hire which we believe is very, very wrong. It almost—

**Senator O'NEILL:** Mr Cameron, I'm talking about 63 audits. We're not talking about opinions in a local newspaper or letters to the editor. We're talking about 63 audits that formed a statement that was asserted as fact by the ABCC. Can I go to the construction industry in particular—not the mining industry; I want to be very clear about that. I want to go to the focus of the audits. This is what it says:

The focus of these audits was to ensure that employees were being correctly paid, including their base rate of pay, penalty rates, overtime rates and allowances. The audits also checked the employers record keeping and pay slips.

Having done that, the key finding then was:

... 50 of 63 labour hire employers audited were noncompliant with Australian workplace laws.

That's nearly 80 per cent. Can you comment on the audits that were undertaken by the ABCC with regard to construction and the failure of compliance with Australian workplace laws?

**Mr Cameron:** We sought further clarity on the nature of that noncompliance. Certainly from our understanding of it—we weren't privy to the actual reports or the details of the audits—a number of them were what might be described as interpretive non-compliance matters, which do occur across all forms of employment, unfortunately, due to the complexity of the law.

**Senator O'NEILL:** Does 'interpretive noncompliance' mean that Australian workers go home without their correct pay, without their penalty rates, without their overtime rates or allowances and don't have proper payslips? Is that what you would constitute as acceptable practice in terms of Australian workplace laws?

**Mr Cameron:** No, we don't agree that that would be acceptable practice. In fact, we encourage strong compliance. We've established accreditation programs to assist members to actually remove some of those interpretive non-compliance elements. We've been before the Migrant Workers' Taskforce to work with them. We've worked closely with the Fair Work Ombudsman. We do what I would argue is an exceptional amount of work to ensure what is a tricky and complex area of law is made clearer to all employers, including on-hiring employers. So I do agree with you: it's not acceptable conduct. We work with all forms of government to try and stamp it out. Even—

**Senator O'NEILL:** But it's still rife in the industry, isn't it? By these figures, 64 per cent of non-compliant employers failed to pay the correct base rates for ordinary hours—that's basically the hourly rate, and they got that wrong; your allowances, which were agreed, were not paid correctly; overtime was not paid correctly; penalties were not paid correctly. In one case study provided by the ABCC they stated that the Western Australian branch of the national labour hire employer was not even complying with one of the most basic provisions of casual

employment, and that's the minimum engagement time for casual employees provided under the applicable industrial instrument, which is four hours. Do you agree that this indicates an overwhelming proportion of your members, who represent 10 per cent of employers in the construction sector, are either totally ignorant or willingly ignoring the basic workplace laws before this legislation even gets to parliament?

**Mr Cameron:** I wouldn't agree it's a willingness to ignore. I think it's highly complex. Construction is a dynamic working environment, where they're moving from one project to another. We look to support them, as every industry body looks to support, to ensure that workers receive their minimum entitlements. I think—

**Senator O'NEILL:** But you're not here representing workers.

**CHAIR:** Senator O'Neill, can we let the witness answer that question that you put to them? I think it was a very contentious question, and it's very important that the witness is able to respond to that question in full.

**Mr Cameron:** I agree with your sentiment: there really is no excuse for noncompliance. We, within our membership and more broadly, promote our industry as professional employers. They must get that right, and we were very disappointed in these noncompliance. We don't have the detail of it, and I also can't state what percentage of those who were audited were members of RCSA. We like to think our members have a high degree of professionalism. That's why we have a code of professional conduct authorised by the ACCC and we do all the work that we do. But your point is quite a valid one, which is that there are circumstances—

**Senator O'NEILL:** Before you proceed, how many of your members have you kicked out for noncompliance?

**Mr Cameron:** In the last five years that I've been CEO of RCSA we've rejected three organisations from being members on the grounds that they have had Fair Work Ombudsman noncompliance. I believe over that same period of time there have been two that have been directed out of our membership.

**CHAIR:** Thank you, Mr Cameron. Senator O'Sullivan.

**Senator O'SULLIVAN:** Thank you, Chair. You mentioned the profile of your members. Can you describe the economic contribution of your members to industry?

**Mr Cameron:** It's a \$37 billion industry. To that extent, it is fair to say that a large proportion of that includes wages. To that extent, we're very proud of the fact that we do provide plenty of opportunities, especially for young workers. Our contribution creates pathways. Our agencies are the largest employers of Australian jobseekers; jobactive data between July 2015 and May 2018 shows that 14 of the top 20 employers of jobseekers are Australian job agencies or employers of on-hire employees, accounting for around 65 per cent of job placements from those employers over the period.

Historical data, in fact, shows that employers of on-hire employees are responsible for placing 13 per cent of Australia's unemployed workers into new jobs. Furthermore, research by The University of Melbourne from 2001 to 2010 suggests that 38 per cent of agency workers transition to permanent employment within a year of working within an agency. So we certainly see ourselves as being a great contributor to opportunities to hire directly, if that's the desire of the employee as well.

I will make an additional comment: we worked with the Australian Human Resources Institute recently to look at the contribution of our industry and at how we can assist them to be better at what they do and to grow. The 2020 research found that the two most important reasons businesses engaged were in terms that employer on-hire employees were able to adapt to the workforce and respond to flexible and changing business conditions; and 26 per cent account for operational requirements. Many would actually not employ workers if they were unable to engage workers as on-hire employees. In fact, our research with the Australian Human Resources Institute, and also RMIT University, said that if businesses were unable to employ an on-hire worker then in only about 50 per cent of cases would those businesses employ those workers directly themselves. So we see ourselves as a job creator as well.

**Senator O'SULLIVAN:** So it really is, particularly for those jobseekers who you spoke about as unemployed previously, a steppingstone for them which they need. Maybe they've been long-term unemployed and transitioning into a permanent, full-time job might be a big stretch, but this is actually a good transitional step for them which can lead to more permanent opportunities. Is that the sort of feedback that you get?

**Mr Cameron:** Yes, absolutely. We're very proud of that role that we play as well. We certainly feel that the other thing which should be emphasised here is what I mentioned earlier: our ability, through our members, to respond to increasingly volatile and diverse economic conditions. There was the way in which we responded to ensure that aged-care residents were getting the care that they deserved. That was a very good example of that. To that extent, we see our contribution across just about every industry and every occupation



We always get very concerned when the focus is only upon some examples of noncompliance. I think every industry has some examples of noncompliance. We work tirelessly to try to stamp those out. In fact, we've been working very closely with all forms of government to try to address many of the issues associated with noncompliance by what we would call 'labour criminals' in the fresh produce industry as well. Through our accreditation program, we now assist growers who supply into Coles and Woolworths to hire only the professionals. We'd like to ensure that it becomes easier to organise and to work with those staffing suppliers who are doing the right thing. Of course in this day and age that's very important, when there are an increasing number of alternative options—including through the gig economy. We see that as creating, in many cases, an unfair playing field.

**Senator O'SULLIVAN:** So how important is casual employment both to host employers and to the employees, obviously—your members?

**Mr Cameron:** I think it's critical. As I mentioned earlier, one of the things I think we all appreciate is that there is a lot of change in the Australian economy. Again, we not unique; there's huge change across the globe. I am vice-president of the international World Employment Confederation. We examine many of these things. The volatility that comes from environmental change, economic change and globalisation through to health events means that businesses must respond and be agile today. To that extent, many clients of our members wish to engage workers directly, but they simply don't have the confidence, so they look for a third party who can specialise in the employment of individuals. Especially for small and medium-sized business, we play a vitally important role in ensuring that they can focus upon the core elements of their business and, where they're using a professional staffing firm, have trust and confidence that we can supply them, as is required, in the right roles. We're also very proud of the fact that University of Melbourne research indicates that on-hire employees, or what they would describe as temporary agency workers, are actually paid more than direct-hire casual employees and more than direct-hire permanent employees. The higher the occupational level, the higher the difference in terms of how much more they are paid. So we're very keen to move on from this idea that we only focus upon lower-paid, semiskilled workers in what Senator O'Neill would describe as the labour hire industry. I think we're really missing an opportunity to understand our industry if we do that.

**Senator O'SULLIVAN:** Throughout these hearings we've heard other options that have been put up to the committee. It was reported this morning that the ALP they will today announce, and they may already have done this, that casual employees will have the right to portable annual sick and long service leave entitlements. Have you seen that? If not, it's okay. Do you understand that to mean that a casual employee who may have multiple employers would be entitled to receive leave from any one of those employers?

**Mr Cameron:** I can only assume that what is being proposed is the portability of entitlements that exist primarily in the construction industry. We've been asking the opposition for many years now for detail around this and other ideas that they've proposed around same job, same pay, which all sounds good in principle. But, when one looks at the practicality, we're very concerned they just add more red tape and more confusion and make it harder to comply. To that extent, we're very open to having ongoing discussions around what the future requirements of the Australian economy and the needs of Australian workers are. However, what I would say is that we have recently seen that more and more individuals are making either casual or on-hire work work for them. Yes, there are examples of individuals who would prefer to be directly employed, and I appreciate that and understand that, but it often depends on their life stage, as well their life circumstances, remembering that casual employees do already get paid for annual leave, sick leave and other entitlements by way of their casual loading.

**Senator O'NEILL:** That wasn't the evidence the other day.

**Mr Cameron:** When we looked at the percentage of on-hire casual employees who wished to convert and become a permanent employee, less than three per cent of them actually ever elected to even have a discussion around it, because they preferred to receive the monetary entitlement. So I think we have to be very mindful that we can't see cost being added upon cost, because that would become an impediment to the opportunities I've just outlined, especially for young workers entering the labour market. We are always open to having discussions around these types of evolutions, but we also need to make sure that we not creating hidden, unintended consequences.

**Senator O'SULLIVAN:** And complexity as well. The added complexity in that environment would come at a significant cost to the employer and therefore limit the jobs that could be made available.

**Mr Cameron:** I think it's a really good point. Let's face it, in this day and age we need to ensure that it becomes simple and easy to do business. We are looking for investment. We are looking for the creation of job opportunities. I just get very worried when I see suggestions around adding further layers, especially when you have multi-party workplaces, which are commonplace these days, and then saying, 'Everybody must be paid the

same rate of pay.' You might have 10, 12 or 13 different contracting firms, for example. I think, going back to Senator O'Neill's point earlier, this is often the case in the construction industry. Then laying another element of complexity to say that if somebody is working the same job they must get the same pay regardless of enterprise agreements or potentially award coverage for the type of work they're doing is just going to make it even more complex. So, again, we have to be very careful around the good ideas being implementable.

One thing, if I could, outline is that I have a very high regard for Professor Mark Wooden, who runs the HILDA survey work. In relation to our industry and casual employment, there's a lot of misinformation—this concept of casualisation when it hasn't increased in 20 years as a percentage of the workforce, nor has labour hire and nor has independent contracting—in fact, it's gone backwards. It's very dangerous. I think one of the things that we need to be careful of here goes to this bill and around conversion provisions and around this idea of almost forcing employers to offer permanent employment when it may not be sustainable. It's something we're very concerned about. I'd be delighted to provide some further information from Professor Wooden around the fact that it could be disadvantageous to actually force employers to offer permanent employment where it may not be sustainable. But where it is sustainable we're very up for that discussion, and it's actually in the interests of our members to actually have on-hire permanent assignments, because they get greater consistency and they can do better commercially as a result of that consistency. So the idea that we would be opposed to conversion in all elements would be wrong, and this is why we support this bill even though it has additional costs for employers by way of administration.

**CHAIR:** Thank you, Senator O'Sullivan. I'm looking at the time now.

**Senator O'NEILL:** Chair, can I just remind you that Senator Sheldon had questions for this witness. If can I indicate, we're willing to finish on time but we would like to prosecute those questions now.

**CHAIR:** I'm aware that the government members also have questions for the Australian Road Transport Industrial Organisation, so, if Labor are willing, we'll still finish on time but the government members will have questions for the next witnesses—

**Senator O'NEILL:** We did have some, but we'll go shorter if we can have the time now for Senator Sheldon to ask some questions, please.

**CHAIR:** If Senator Sheldon can limit his questions that would be appreciated. Senator Sheldon, you have a few minutes.

**Senator SHELDON:** Thanks very much, Chair. To go to this point of people's working conditions and what people want, there was a case labelled the Paul Skene case where a casual had forward rosters for over 12 months, lived on campus—in the case of the construction industry—was a FIFO worker working shift and was classed as a casual employee even though those shifts were 12 months forward. He was labelled as a casual and apparently paid up to 40 per cent less than his workmates, who were directly employed doing the exact same work. Do you think that's fair?

**Mr Cameron:** I don't think it's possible to sit there and simply determine whether something is fair without full consideration. And one of the things I think—

**Senator SHELDON:** Is it fair if you have a 40 per cent wage decrease?

**CHAIR:** Senator Sheldon, please let the witness respond to your question.

**Senator SHELDON:** I'm just making sure he understands the question I'm asking him.

**Mr Cameron:** I think in the black coalmining industry it's very important to understand that the labour hire firms that supply in there have enterprise agreements they've made in consultation with the unions, so the unions have actually agreed to enterprise agreements that provide the terms and conditions that are inconsistent with the clients' enterprise agreements. So I would go to the point of saying that it is appropriate for a union in consultation with a labour hire firm to reach an enterprise agreement outcome that is different and that is acceptable to the parties. Then I would argue that, yes, generally, that could only be seen as fair, otherwise one would question the role of the union.

**Senator SHELDON:** Do you believe that there should be the same pay for the same job?

**Mr Cameron:** I don't think it's as simple as saying 'same pay for the same job'—what is a job, what is they pay—

**Senator SHELDON:** I'm just mindful that we've got very little time. So, there's someone doing a forward roster for 12 months that's on shift and gets those shifts and argues that they should be given the right entitlements of a permanent employee—they're getting paid up to 40 per cent less, currently, than people doing the exact same work who are permanent employees—and you're saying that's fair? Quite frankly, you and I know quite clearly

that unions, to be parties to agreements, have to turn around and also be involved directly—to be in the agreement, they have to make an application so that they can represent workers down the track. So, they've taken these cases up very importantly—those workers have taken these cases up. I'm asking a question about fairness, not process. Is it fair that someone doing the exact same work is classified as casual rather than permanent and the casual receives a wage rate of 40 per cent less?

**Mr Cameron:** I think if we flip it—as I mentioned earlier, Melbourne university research indicates that on-hire employees are on average paid more than their counterparts—

**Senator SHELDON:** No, I'm talking about—

**Mr Cameron:** If I were to say that that was unfair, would I say that those examples of higher payment are unfair as well? This is where it becomes complex, I believe. I also believe that the bill as proposed in relation to casual conversion would have assisted in resolving concerns that Mr Skene may have had. I'm no lawyer, but—

**Senator SHELDON:** You obviously aren't, because if you look at the legislation it doesn't have arbitration rights; it has the employer saying whether they're a casual at the beginning of the employment, and they become a casual.

**Mr Cameron:** But the employer would have had to provide facts to argue why they—

**Senator SHELDON:** No, the employer has to demonstrate a personal, mental belief that that's the situation—that they personally, genuinely believed—and that's a matter of intuition and view about how their contracts might run.

**Mr Cameron:** I always find it interesting that this bill in fact is going to provide benefits that are greater than the existing entitlements under awards for casuals.

**Senator SHELDON:** That's simply untrue.

**CHAIR:** Senator Sheldon, could you please stop interrupting when the witness is answering your questions. You may not be happy with what the witness is saying, but the witness is answering your questions, and we'd appreciate it if you could let the witness finish his sentences please.

**Senator O'NEILL:** A point of order, if I can, Chair: it is important for the integrity of these hearings that witnesses are very careful in their evidence and that while they may hold opinions they are required to be truthful and not misleading in their comments. Mr Cameron should be mindful of that, as should all witnesses—about telling the truth in response, rather than reconstructing.

**CHAIR:** Senator O'Neill, there is no point of order. Mr Cameron is being truthful. He's giving his opinion on behalf of the organisation that he's chief executive officer of. You and Senator Sheldon may not like the evidence that he's given, because it is evidence that is not backing up your position in relation to the bill. But it is still the opinion of himself on behalf of his organisation.

**Senator O'NEILL:** He's using evidence from Melbourne university which he declared on the record is 11 years old.

**CHAIR:** And he's entitled to give evidence. It can be a month old or 11 years old—

**Senator O'NEILL:** Evidence that's misleading?

**CHAIR:** It is not misleading for that witness to give the evidence in the context that he's given it. I'm just looking at the time, and we're going around in circles at the moment. So, I'm going to thank the witnesses for appearing today. I thank you very much for coming along.

**ANDERSON, Mr Peter, Chief Executive Officer and National Secretary, Victorian Transport Association and Australian Road Transport Industrial Organisation [by audio link]**

**RYAN, Mr Paul, National Industrial Advisor, Australian Road Transport Industrial Organisation [by audio link]**

[14:58]

**CHAIR:** Welcome. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I invite you to make a short opening statement. At the conclusion of your remarks I'll invite members of the committee to ask questions.

**Mr Ryan:** Both Peter and I have worked directly in the industry since the 1980s. To give a bit of background, ARTIO is the only registered employer organisation working solely in the road transport industry and has been registered since 1984. ARTIO has just under 400 members across the state branches, which operate in all states except South Australia. ARTIO and its branches played a major role in ensuring the country was fed throughout 2020, and its members delivered a large proportion of the parcels ordered online during COVID. ARTIO was disappointed that it was not invited to participate in any one of the five working groups. ARTIO represents the large national and multinational companies, down to the small mum-and-dad operations in regional Australia.

At the outset I'd like to say that ARTIO supports the award system but in some cases believes that award rates need to increase to better reflect the skills and abilities of drivers and also lower the differential between those working on enterprise agreements and those employed under the various road transport awards. This differential arises as a result of the industry being price takers. Those at the top of the supply chain determine the price of transport. Given that fuel, repairs and maintenance, the cost of vehicles, registration, insurance et cetera are all fixed costs, the cost of labour becomes the point of competition. It drives the cost of transport services down through cutting labour costs, including superannuation, which we note is not addressed as an industrial relations issue, despite its history.

With respect to casual employment, we support the inclusion of a proper and clear legal definition of 'casual employment' into the Fair Work Act. But let's be fair dinkum and include all of those casuals working in the gig economy and taking work away from traditional transport companies and businesses. We now believe that Uber delivers freight; Amazon are engaging contractors, supposedly at arms-length. The transport industry uses casuals, and some are almost permanent. But an extra \$5 per hour or \$200 per week is vital to those casual workers, and many wish to remain and work as a permanent casual. But we reinforce the fact that the definition of 'casual employment' is important in the legislation.

With respect to wage theft, ARTIO supports the introduction of laws that criminalise wage theft, wilful and deliberate action to short pay—and let's call it what it is: stealing from a worker—but, if it becomes a criminal matter then the criminal onus of proof must apply; that is, beyond a reasonable doubt. Awards are complex and written by people like me, and sometimes our intentions are not as clearly expressed as they should be. So, where misunderstandings or honest mistakes occur, then the current regime of enforcement should continue.

What is included when we discuss wages under the banner of deliberate underpayment or, in some cases, nonpayment? Obviously, entitlement under an industrial instrument, whether it be wages, allowances, overtime payments et cetera. But we also consider that superannuation must be included. Currently the ATO is supposedly responsible for nonpayment or underpayment of super through the superannuation guarantee charge system. Does it work? It never has, in our view. So, once again, let's be fair dinkum about dealing with wage theft by including superannuation. We also need a regime of education and enforcement. If the system is going to change to criminalise wage theft, then government has a responsibility, either through its statutory bodies or through those bodies that represent employers in the industry, to assist with education and enforcement. In terms of processing enterprise agreements, speaking personally, I've been involved in around 400 to 500 since enterprise bargaining began in 1991. I could count on one hand the number that were approved in 21 days. So let's set realistic and attainable goals. Let me give you some figures. In February 2019, there were almost 2,000 enterprise agreements awaiting approval before the Fair Work Commission. In November 2019, that figure was almost 500. On Sunday 7 February 2021, there were just under 300. So there has been a marked improvement over the last two years.

Let me make this comment on the Fair Work Commission's interpretation or application of the law around enterprise bargaining approvals, bearing in mind that there were some amendments introduced in late 2019 to assist with what might be termed technical objections. I'll quote from a document which I have received from a Fair Work Commission office, and they're concerned about [inaudible] associated with the lodging of an enterprise agreement: 'The signatory for the employees has not indicated their position title with the employer. Furthermore, the address supplied by the signatory for the employees does not include a postcode or a state. This

raises the issue that the agreement may not be properly signed for the purposes of reg. 206A of the Fair Work regulations.' Are we now saying that an agreement can be knocked off because it didn't have a postcode in it? I certainly hope not.

ARTIO is silent on the extension of the workplace flexibilities introduced during COVID. Truck drivers can't work from home. And, as a service industry, it simply provides the link between the initial owner of the freight and its subsequent purchaser. Truck drivers don't have the luxury of sitting at home and delivering from there. ARTIO does not have a position on greenfields agreements as they are rare in the transport industry, but we note that brownfields agreements are not mentioned. We also make the observation that an eight-year greenfields agreement needs a very elucidating crystal ball to attempt to guess the future and the economic situation over that eight-year period.

We would urge the Commonwealth to provide a legislative regime to support the vaccination program that will occur this year. It cannot be left to the employer to police this area. It is society's issue, and government, as the elected representatives of our society, must provide some guidance and leadership around this vexed question. How does an employer determine what is right between a person who insists that they must be protected in the workplace from COVID and another employee who can't be vaccinated for medical, psychological or any other reason? We say that government must not abdicate its responsibilities here.

Finally, we say that flexibility is not about enhancing poor standards and business practices. For instance, an EBA saying that the employer would pay the first two fines that an employee receives for breaking the law just simply reinforces poor business practices. That's not a hypothetical EBA; that's a real-life enterprise agreement where the employer pays the first two fines. It simply condones bad behaviour and bad business practices. Enterprise bargaining should be about improving working conditions and practices. Thank you.

**CHAIR:** Thank you. We'll keep the questions tight, and I hope you can keep your answers also tight and, if you need to take them on notice, we'll understand that. I think Senator Sheldon has two questions. Senator Sheldon?

**Senator SHELDON:** Did I say two?

**Senator WALSH:** I don't think we ever said that, Chair.

**CHAIR:** Okay. Then there are a couple of questions—

**Senator WALSH:** Some questions—

**CHAIR:** or some questions, and can you keep it tight, please, Senator Sheldon.

**Senator SHELDON:** Thanks, Chair. Thank you for joining us this afternoon, Mr Anderson and Mr Ryan. Would it be appropriate to describe the industry that you're in as operating on providing services for hire-and-reward transport for supply chains? That there are low margins, it's highly competitive and there is a high demand to provide the cheapest rates to clients? And where productivity and cost benefits are received sometimes by the transport companies—those companies being entrepreneurial in making sure that they purchase at the lowest—that quite often those cost benefits are passed on to clients in this competitive market?

**Mr Anderson:** There's no doubt that the hire-and-reward transport industry is based upon high-volume and low-margin work. Generally, it's been generated through the process of negotiation by customers who understand the supply chain intimately and they're able to manipulate the market accordingly through their negotiations with the service providers.

A service provider cannot negotiate a cheaper fuel price and cannot negotiate a cheaper rent. Generally speaking, the only way to create a price differential is to supplement that through reducing their labour costs. Even though that's a generalisation, that's the nature of the industry that we're working in at the moment and it needs some help.

**Senator SHELDON:** Thank you, and I note the point about the importance of the award system that Mr Ryan gave in his opening statement. I'll just turn to the BOOT—the better off overall test. You are aware that the protections are being withdrawn in the BOOT—particularly in allowing capacity for the hourly rate only to apply. If allowances, penalty rates and shift penalties were taken from employees in an agreement in a highly competitive industry, what would be the effect on a company which was still paying those allowances and conditions in this low-margin industry?

**Mr Ryan:** Eventually they would be undercut for the work and it would go to another operator who is a lot more footloose and fancy free with how they pay their employees. As I said at the outset, both Peter Anderson and I have been around this industry for a long time. We've seen multinational companies like Mayne Nickless and TNT, who complied with the law, entered into enterprise agreements and paid their workforce fairly and, in

most cases, generously, lose work to those up-and-coming businesses. In those days, it was to Toll and others. That has subsequently happened again. It seems to be about a 20- to 25-year life span of the top of the transport industry before you get rolled over by other companies which simply pay on the award, or pay a flat rate or pay under the award. The industry has always been one that relies on hours and overtime, and the industry costs its services on the basis of hours and overtime—and shift work, where shift work is worked.

**Senator SHELDON:** Just coming back to your evidence: if one company in this highly-competitive market were then to reduce those penalty rates, those shift allowances, those public holiday payments and those overtime payments, would there be pressure for other companies to follow suit, or do they go out of business?

**Mr Ryan:** Yes, there would be financial pressure on other companies to protect their client base and to protect their market share.

**Senator SHELDON:** Would it be accurate to describe this as causing a race to the bottom?

**Mr Anderson:** It would put pressure on the industry to compete on price only. My truck isn't any bigger than your truck and it doesn't drive any faster in the marketplace, so what creates the differential? Unfortunately, the industry is very much governed by price and not by any other means of creating a better product.

**CHAIR:** Senator Sheldon, just looking at the time, I need to ask you to put your further questions on notice.

**Senator SHELDON:** I have just one other question. I'll be brief. You've mentioned concerns about the gig economy and the need for regulation in the gig economy. What sort of regulation would you envisage being more appropriate for the gig economy?

**Mr Anderson:** The industry sees the oncoming gig economy and the way it's being managed at the moment as a threat to our standard of living and a winding back of employee protections. We would like to see a classification of the industrial relations status of a gig worker. We believe that that simple justification would then be able to lead any jurisdiction and any law in the right direction to ensure that the workers are protected accordingly.

**Senator DAVEY:** I am cognisant of time. I just want to talk a bit further about something and unpack it a bit more. You mentioned that the industry uses a lot of casuals but most of them are permanent casuals. Is that correct?

**Mr Ryan:** I mentioned that the industry does use casuals. How you define a lot of them is an interesting question. The nature of the industry is that it peaks around November through to the end of December for the Christmas period. It peaks again over Easter and again around Mothers Day. Sometimes that peak is met by using casual employees, and they might work from November through to May. There also are casual employees who are semipermanent or almost permanent because they want the 25 per cent loading, the extra about \$5 an hour on their pay, for financial purposes. They might have another job, but they come to work in the transport industry, sorting freight from 4.30 pm to 9 pm on many nights. So, yes, we have casuals. Yes, some of them are permanent. But we also have genuine casuals as well.

**Senator DAVEY:** You did say that the act needs a definition, and we've heard that from other witnesses as well. Notwithstanding I totally accept that some people want to remain as casuals because they appreciate the loading, do you think it's reasonable that there be a clear pathway for someone who wants certainty and security and access to leave and those sorts of things? Is having a clear pathway to transition from casual to permanent part-time employee a good thing?

**Mr Ryan:** The answer to that is yes, and there is a pathway that exists in the current award system. For any casual employee who has been there 12 months, within four weeks of their 12-month anniversary, an employer has an obligation, if the job is going to continue, to ask them if they would like to transfer across to permanent employment. Some do that. Some choose to continue on as a casual. So a pathway currently exists in the award system.

**Senator DAVEY:** You also mentioned in your introduction that the cost of labour is a key competition factor. Those in your industry are price takers, and you talked about the current operation of the fair work enterprise bargaining system. Can you explain to what extent the changes proposed in this bill will actually help address some of the issues that you raised in your opening statement?

**Mr Ryan:** Hopefully the introduction of a definition of casual employment will assist, as I said in my introduction. And most of the people who work in the gig economy I would classify as some form of casual worker, whether they be an independent contractor or an employee. We know that traditional transport users are now using Uber and others to deliver freight. That takes work away from legitimate transport businesses. So, any definition that extends to include a gig worker will benefit the transport industry. The ability to process enterprise

agreements in a timely and much less technical fashion will assist those companies that might want to engage with their staff to negotiate arrangements that suit the particular service that they provide. We have a lot of transport members who might have four or five different depots but service four or five different clients, and the clients need the difference. So, it can't be one size fits all. There might be an enterprise agreement for a particular site that has purpose-built trucks delivering building equipment, as against another site that simply has what one terms general trucks delivering freight, or multiple deliveries or pallets. They have a completely different set of working arrangements, and they need to be addressed, and better abilities to negotiate workplace agreements will assist in that process.

**Senator DAVEY:** If these changes aren't made, what do you think will happen to enterprise bargaining going forward, and what do you think it will mean for your industry?

**Mr Ryan:** If these changes aren't made we will continue to struggle along as we do and as we have done. It will impact our industry, but one of the things I've learnt in the nearly 40 years that I've been involved in the transport industry is that we will get the job done at the lowest possible price and in the best manner possible, as we did during COVID. That's an important point. Everyone else was locked away, but the transport and logistics industry was out there ensuring that the country was fed, that parcels were delivered, that supermarkets were stocked with toilet paper. So, it'll get done. But we can certainly improve around the margins.

**Senator DAVEY:** And as someone who is on the COVID-19 committee, I am very aware of and thank the industry for keeping us going through COVID. It was acknowledged through that committee, and I'd like to acknowledge it here, that keeping the freight moving on our roads and ensuring that those goods were able to get delivered throughout our country was vital, and I thank the industry for it. Do you see other economic benefits for both employees and employers if this bill is passed? If so, what might they be?

**Mr Anderson:** We'd like to see an improvement in the bargaining process to ensure that there's an improvement in employee protections and to eliminate red tape. We've been keeping track of EBA negotiations for some years now, and we're able to give data on time lines and types of negotiations that have gone on. The system is slowly healing; it's slowly getting better. But the thing is that we could do a lot more with this bill. The other point there is the fact that we need processes that give adequate checks and balances to workplace obligations to ensure that employers know what their true responsibilities are in the workplace, without putting imposts upon them. It's not about making life harder or costing more money, so to speak, but actually driving a better outcome for workers and employers. These amendments would clearly define a pathway for that to happen.

**CHAIR:** On that basis, Senator Davey, I thank you for that. And Mr Ryan and Mr Anderson, that concludes your evidence before the committee today. I'd like to thank all the witnesses who've given evidence to the committee today, along with the secretariat, Hansard and everybody else who has assisted with the smooth running of this hearing. I'll see everybody next week in Canberra.

**Committee adjourned at 15:25**