



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

**INQUIRY INTO WORKPLACE
RELATIONS FRAMEWORK**

MR P HARRIS, AO, Presiding Commissioner
MS P SCOTT, Commissioner

TRANSCRIPT OF PROCEEDINGS

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5 **MR HARRIS:** Good morning, everybody. I am Peter Harris. I'm Chairman of the Productivity Commission and with me today I have Patricia Scott who is Deputy Chairman of the Productivity Commission, and we are the Commissioners undertaking the Inquiry into Workplace Relations on behalf of the Australian Government.

10 So welcome to the public hearings phase of our inquiry. This is the first of the public hearings here in Bendigo. The purpose of this hearing is to facilitate public scrutiny of the Commission's work and to receive feedback and comment from all interested participants. Following today, we will be in Hobart, then Melbourne, Canberra, Adelaide, Sydney and Ipswich. We are going to be working towards a final report of the government in November of 2015, having considered all of the evidence presented at hearings and the submissions, and for those of you that are interested, we are in a second round of submissions phase so very keen to get written contributions as well.

20 Participants and those who have registered they are interested in the inquiry will be advised via email of the final reports released by the government, which may be up to 25 Parliamentary sitting days after we complete at the end of November 2015, which effectively means sometime in early 2016. We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken and, for this reason, comments from the floor will not be recorded but at the end of proceedings for the day I will provide an opportunity for any persons wishing to do so to make a brief presentation.

30 Participants are not required to take an oath, but should be truthful in their remarks. Participants are welcome to comment on issues raised not just in their own, but in other submissions. The transcript will be made available to participants and on the commission's web site, following the hearings and all submissions are being put up on the web site as well. We do not permit video recordings or photographs to be taken during the actual question and response part of these proceedings, but social media such as Facebook and Twitter may be updated throughout the day. We do ask all audience members to ensure their mobile devices are switched to silent, which reminds me once again, what did I do with mine? I should find it and turn it off.

(Housekeeping matters)

40 I think today the first participants are from VECCI, am I right? Welcome to participants from VECCI. For the record, can you identify yourselves as we go? Meantime, I will search for my phone.

45 **MS BURRELL:** Lisa Burrell from VECCI.

MR BARKATSAS: Nicholas Barkatsas also from VECCI.

MR HARRIS: Thank you very much. Do you have an opening statement or some kind of thing you would like to read, or shall we just launch into general comments?

5 **MR BARKATSAS:** Well, firstly, I guess we'd like to take the opportunity
to thank the Commission for this opportunity to further discuss our
submissions and, of course, the draft report. There are a few matters which
we have highlighted earlier this week that we would like to talk through,
10 however we would be open, of course, to any recommendation or question
from the Commission where perhaps we could - we may be able to consider
providing any further input in our final written submissions.

15 I might start in terms of the agenda points that we earlier sent through.
There is one point that was not raised on those but what I might do is just
briefly touch on that and perhaps leave it until the end.

MR HARRIS: Sure.

20 **MR BARKATSAS:** We wish to make some brief comments regarding the
portability of long service leave which was raised in the draft report and this,
of course, comes on the back of a Parliamentary inquiry in Victoria that has
been set up since the release of the Productivity Commission terms of
reference, but as I said I might leave that to the end of our submissions this
25 morning.

MR HARRIS: Okay.

30 **MR BARKATSAS:** The first matter that we would like to raise is referred
to in our submissions. In our written submissions we've highlighted what we
call six core concerns, first which we have highlighted is the public holiday
provisions within the National Employment Standards.

35 Now within that, we've made a very strong point regarding our state's
ability to declare new public holidays and we agree with the Commission's
view in terms of the ability to do so has consequences; we say that has severe
consequences. For example, VECCI estimated that the cost to pay Victoria's
full-time employees to not work for the newly gazetted Grand Final public
holiday could reach \$543 million.

40 We're on record with a consistent view regarding this point, regarding
this issue and we submitted the same to the 2012 Act review and primarily
highlighting the inconsistent application and the gazettement of public holidays
by the states, which as I said has a significant effect on business. We note
45 that there was a recommendation in the 2012 review of the Act which to date
has not been legislated, and also we would agree with the view of the
Productivity Commission in the draft report that states as with any new

regulation entailing large burdens on business, state and territory governments should analyse these costs and benefits before any declaration.

5 With respect to the Productivity Commission's recommendation that no further obligation to pay penalty rates for newly designated public holidays, we welcome that recommendation, however, we also consider that in order to better achieve some form of harmonisation between the states that in addition to that there ought to be a nominated amount of public holidays within the National Employment Standards to which the payments and penalty rates
10 et cetera apply, which we would say providing a more even playing field across the states and we suggest this could be achieved by nominating that number within the NES.

15 So whilst we welcome the recommendation in terms of, effectively, freezing the current level as the Productivity Commission has recommended, we would also press that perhaps a step further in so far as trying to rationalise the number of those public holidays across the states.

20 **MR HARRIS:** So there is a number currently in the NES; it is eight by my recollection, but of course then there is the variation, and we have a table in the report showing the wide variation between the states and the different public holidays. So just to clarify your proposition, are you saying that it's not about cancelling the public holiday where they vary between states, it is about saying that the obligation to pay for public holidays is what should be
25 limited to a certain number.

MR BARKATSAS: Yes, because - and absolutely there is the nominated public holidays within the NES at the moment, however, there is the extra I suppose catch-all provision of any other gazetted public holiday in a state or
30 region and so we would say that it is that this actually creates the obligation for a paid day off, for example, or then from then into the award system for penalty rates so although the gazetting of public holidays is, of course, a state power, the effect or the real impost on business is created by virtue of the National Employment Standards, primarily, and the award stop
35

As I said, whilst the freezing, insofar as I can put it that way, is welcomed, we would also say that some form of rationalisation - so I believe, for example, at the moment Victoria with the most recent public holiday has a figure of 13, compared to some other states which might only have nine or
40 10.

MR HARRIS: I think we are all very conscious of the fact that there are quite significant differences between the states and that, presumably, for firms working across state boundaries must create some forms of
45 complications, but that clarity I wanted to get is you are simply saying that while you can have the public holiday above the National Employment

Standards' number, whatever it might be, the obligation to pay should not be imposed by the National Employment Standards.

MR BARKATSAS: Yes.

5

MR HARRIS: Do you want to ask anything more on this, Patricia?

MS SCOTT: No.

10 **MR BARKATSAS:** Thank you. So that's what we wanted to raise with respect to public holidays. The next core concern that I would like to touch upon from our submissions are the recommendations concerning the approval of enterprise agreements, and what we see as a heavy procedural burden that applies within the framework.

15

We welcome the views in the draft report, which what we believe are arcane, and complex and that sometimes mind-boggling red tape associated with the approval of an enterprise agreement - of course, the infamous Staple case is referred within the draft report. I would also like to highlight a more recent example, it was from earlier this week where it initially an agreement was knocked back by the Fair Work Commission because there was a reference in the notice of employee representational rights to Fair Work Australia, not Fair Work Commission.

20

25 Whilst this was overturned by a Full Bench and remitted that approval back to the member at first instance, that only occurred after the employer had to utilise, as I believe, senior counsel and run a fairly complex argument regarding the Acts Interpretation Act and we say that that amount of rigidity and complexity within the system necessitates the shift to - and if I could use that the Commission's words, "make the procedure a server and not the King."

30

We also note that there have been examples where both the employer and the union have pressed the Commission to approve an agreement despite, for example a procedural flaw to do with the notice of employee representational rights or another procedural issue, however, due to the mandatory and rigid nature of the elements of the framework itself, the Commission has had no choice but to refuse the approval of the agreement.

35

40 We note the recommendation 15.1 in that draft report which allows or would allow a wider discretion for the Fair Work Commission to approve agreements where those sorts of unmet procedural requirements otherwise not place employees at a disadvantage and we say that accords with our submission in terms of broadly approving an agreement where it is satisfied it is reasonable to do so where a pre-approval step is not complied with. We believe that such a discretion in those circumstances could go a fair way to

45

curing those procedural deficiencies which arise in these enterprise agreement approval processes.

5 **MR HARRIS:** Are you able to put on the record the firm involved in this most recent equivalent to the Staple case? If you are not, that's fine. We always ask for this. We ask the maximum amount of transparency we can get and then - - -

10 **MR BARKATSAS:** Absolutely, I do know that it is a decision which was issued on 2 September and it was a Full Bench decision from the Fair Work Commission.

15 **MR HARRIS:** That's fine, we can probably track it down through the standard public processes.

MR BARKATSAS: We will certainly be noting that in our final written submissions, of course.

20 **MS SCOTT:** It is an interesting example.

25 **MR BARKATSAS:** Really, I guess, on that point, it is one of those - it is another example, the Staple case of course being one of the most high profile. There was another similar case regarding a tear-off slip on a notice of representational rights and we will be making reference to that in our written submissions as well, but these are just some examples where, as we've said that really arcane and complex framework is hamstringing the Commission that must reject the approval of those agreements which in many times come after an arduous process of bargaining and paperwork in terms of the approval documents and can really set back a business and its employees for a fair period of time.

35 We also note recommendation 15.5, from the draft report. Now, this concerns a time limit in which nomination to be a bargaining representative must be submitted. We say this is appropriate and welcomed and, of course, touching on the earlier point, even the inclusion of such a time limit in the notice of employee representational rights make that notice to be void or even, of course, if you include a nomination slip via a stapled form. So we certainly say that the time limit is welcomed and appropriate.

40 Now, we have got the second component of that recommendation being the imposition of a minimum proportion of employees to have - to enable and employee bargaining representative to be appointed. We have some reservations with this particular recommendation, particularly I would stay if it is set any higher than the mooted - and I know it just seems to be an example - the mooted five per cent. We say if that five per cent figure is elevated then we would have some reservations.

5 We also note the analysis there and the view of the parties that the Commission has analysed with respect to employee bargaining reps and we think that any higher proportion on that nomination proportion may very well have a chilling effect on a non-union employee voice, which would propagate the choice or apathy to yield to the arrangement, which is the words that are used in the draft report, which may very well have equally minimal representative capacity.

10 **MR HARRIS:** This has been a tricky one, because there is no great science behind the five per cent as there really can't be, but there are views on both sides. We have had representations to the effect that having a very large number of bargaining representatives around the table makes bargaining both complex and problematic in reaching conclusions; taking the extreme example of someone really just representing themselves rather than
15 representing a wider group.

On the other hand - and as you note, I think, or may not have noted, but in the recommendation, I think the idea we have is we are not trying to exclude organised labour from this. If you have members then you have a
20 right to be at the table.

MR BARKATSAS: Of course.

25 **MR HARRIS:** The five per cent is more for people who aren't in the act, so it is - this is been a tricky one, but again the intent is to try and come up with a conclusion which simplifies the bargaining process. So if inputting in written comment we have noted, I think, and we have got on the record from what you've said that you certainly don't want to go any higher than five per cent.
30

If you have a better way of potentially characterising some flexibility here, whilst still achieving again - I mean, we just don't want a number for the sake of having a number, we want a number so that we simplify the process for all the parties. I mean, we have had representations from both
35 sides about the question of complexity and negotiations.

So if there is something you can put in that, that one in particular - I mean, we welcome comments on all the recommendations. That one in particular, if you have got anything to offer that would be good.
40

MR BARKATSAS: Certainly, yes, and in our discussions about that particular point, we can also see and have had experience where a large number of employee reps that potentially may be only acting in their own interest of representing themselves may very well delay the bargaining
45 process, but we also see on the flipside, in particular, in small to medium businesses where having the ability for those representatives to sit at the table and have their own views for what might be a relatively small number of

constituents is also very important to building a collaborative process where all parties are ultimately agreeing with the outcome and hopefully voting in the agreement.

5 So whilst we note - whilst I agree that it would be difficult to come to a particular figure, we'd say that if that proportion figure was to increase - - -

10 **MR HARRIS:** Yes, I did note that. You certainly don't want higher number than that, but within that, what I might call the five per cent area, if there is some new you have we're quite interested in obtaining commentary from all parties on that, because we don't want to say that we've found the magic number. We haven't, we're just trying to feel our way towards what might be helpful for the purposes of getting to a conclusion more rapidly in negotiations.

15 **MR BARKATSAS:** Thank you. We would consider that and hope to comment on that in our written submissions.

20 **MR HARRIS:** Thanks.

25 **MR BARKATSAS:** So I will move on to our core concern number 3, which is regarding industrial action which is inclusive of protected action ballot tests, the inclusion of non-permitted matters in enterprise agreements and the tests and thresholds to terminate or suspend industrial action. These are contained within chapter 19 of the Commission's draft report.

30 We note the views regarding the inclusion of permitted matters in enterprise agreements and the potential for more complex and lengthy litigation at the approval phase. If the Commission was required to apply the, at times, clunky matters pertaining jurisprudence potentially too many or all clauses of a particular agreement.

35 We also note at page 654 of the draft report where it summarises effectively the legislative framework where other conditions that must be met for action to be protected. It includes one of the dot points there that the action must be in support of claims regarding permitted matters, however, we see that as recently as February of this year, there was the decision of the Full Bench of the Commission which express a view that there is no legislative warrant for the adoption of a decision rule such that if an applicant is or has been pursuing a substantive claim which is not about a permitted matter, it is not genuinely trying to reach agreement within the meaning of section 443. That was the case in *Esso v AMWU*, the CFMEU and the AWU, that's [2015] FWCFB 210.

45 So in that framework, whilst cognisant of the potential pitfalls and lengthy delays in the approval process of clarifying or determining what is or what isn't a permitted matter at an approval stage, as has been noted by the

Commission, our proposals in our submissions looked at it from a slightly different perspective insofar as we see that in the test for applying for a protected action ballot order, we submitted that industrial action that is in support of non-permitted matters should not be protected and, effectively, that could be enforced through a specific reference to non-permitted matters in the criteria for the Commission approving a protected action ballot.

Put simply, we say that employee should not be able to take industrial action in pursuit of what are, effectively, legally void matters. So whilst it would increase the difficulty and the complexity at the approval stage of an agreement if the Commission was required to do so, if we sort of rewind somewhat at the industrial action stage, that would dissuade employees and prohibit employees from taking such action that's effectively in pursuit of non-permitted matters.

MR HARRIS: It's a tricky one to analyse, isn't it, because if I understand what you are saying correctly, the Full Bench has said it is not an impediment to making a claim to proceed with industrial action, permitted action, it is simply that you will have net resistance in pursuing non-permitted matters. They are saying it is not sufficient. I can see the logic of something which says, "Isn't that a bit weird? You can still trigger a strike for permitting a non-permitted matter."

On the other hand, if you were to attempt to invalidate that pursuit of non-permitted matters, you could still get the industrial action being pursued under a different heading presumably and you may not necessarily achieve very much. I guess that is the concern about adding to complexity here, that you may not achieve very much by eliminating something which on its face appears to be, you know, a strange quirk of logic. Mind you, the law is filled with strange quirks, as a non-lawyer I can say, but you may not achieve very much. What is your reaction to that?

MR BARKATSAS: Well, we say that whilst it may result in the industrial action being taken in support of or under the guise of a permitted matter - - -

MR HARRIS: Another matter, yes.

MR BARKATSAS: - - - of another matter as, of course, employees are free to do, at the very least it would provide a strong disincentive that that particular non-permitted matter is pressed at the bargaining table. If an employer is able to say, through a quirk of logic, "That is not a permitted matter," and they could, more effectively, be able to respond at bargaining table if the threat of industrial action in pursuit of that matter is not possible, is not on the table.

So it may not very well have the complete eradication of non-permitted matters, but it may cure - and I don't have a number - but a proportion of industrial action that is taken in support of non-permitted matters.

5 **MR HARRIS:** I think I recall, but you might be able to help me on this, it is actually acceptable, is it not, to have a non-permitted matter agreed between the parties and acted upon as long as it is not part of the submitted agreement or something equivalent to that effect. In other words, you can still have agreements on non-permitted matters, you just can't have them in an
10 enterprise bargaining agreement.

In other words, until someone triggers the law and says, "Please strike this down," two parties can happily cooperate on something that isn't permitted as a - - -

15 **MR BARKATSAS:** Yes. So I guess, it's not a barrier to approving the agreement, so it may very well be included in the written text of the document.

20 **MR HARRIS:** Could even be in the written text.

MR BARKATSAS: Because it's not barrier to the Commission not approving or rubber-stamping that agreement that is made by the employees. It is just that from the enforcement perspective or a compliance perspective
25 it's not enforceable - - -

MR HARRIS: You couldn't go to seek an order enforcing it.

30 **MR BARKATSAS:** Yes.

MR HARRIS: Yes, it is one of the great - it's a good example of the complexity of the system which everybody in principle dislikes, but in practice it does benefit some parties at some particular point in time, such that if you were to take it away you would cost somebody something and we
35 are very interested in this issue of complexity and in principle, everybody would like a simpler regulatory system. So where we can, we have sort of leant towards, "Let's at least leave it as it is, rather than making it more complex." But your representation today is this is a significant enough worry beyond the specific example of a particular case. It's a significant enough
40 worry for negotiations generally. Would that be your submission?

MR BARKATSAS: Well, we would say that it - well, in taking into account what the Commission has - their views insofar as the complexity of permitted matters and if we were to go to the system that did apply briefly where there
45 was a restrictive list, then that potentially has its own pitfalls, but there is still, I would say, a fairly broad cross-section of discontent with the matters

pertaining doctrine and permitted matters in general as to what it is and what it isn't. It is always going to be a very heavily disputed area.

5 What we would say is that in a proportion - I can't say whether that
would be a number in terms of the proportion, but it would take away the
disincentive for very potentially wide-scale industrial action being taken in
support of something that effectively later on down the track, as we have
discussed, cannot be enforced or otherwise endorsed by a court. So it is one
10 of those very particular quirks of industrial relations framework, and what we
say is that it is a - what we have proposed is a slightly different mechanism to
try and eliminate the adverse effects from one of those quirks, because
addressing the quick head-on is so difficult.

15 **MR HARRIS:** How comfortable would you be with a notion - I mean, there
have been representations made of what I might call a general nature rather
than - even in submissions to us, but general commentary in the media and
that to the effect that the system should be much more deregulated, without
being very specific. So how would you feel about something which said,
20 "Well, let's deregulate permitted matters. Let's have no restrictions on them
at all"? Where would you think the balance of advantage and disadvantage
would lie in such a deregulated system?

25 **MR BARKATSAS:** Well, we would see that if there was such a wide
amount of - yes, such a huge scope for where bargaining could go and where,
potentially, industrial action could go that if it's not a matter pertaining to the
employee/employer relationship, then a whole raft of things that perhaps a
lay person would say is irrelevant when enterprise agreement or scratch their
head and say, "Well, how does that fit into the framework," would become
30 potentially a matter of sharp disagreement.

30 **MR HARRIS:** And extend a negotiation presumably.

35 **MR BARKATSAS:** So it's one of those, again, quirks of the system where
overly intense deregulation may very well lengthen and protracted issue.

35 **MR HARRIS:** Thank you. Patricia, anything?

40 **MS SCOTT:** No, it's all right. Thank you.

40 **MR BARKATSAS:** We also note the request for further information
regarding a mechanism to restrict pattern bargaining where it is imposed
through excessive leverage or is likely to be anti-competitive or yet allows it
where low-transaction cost agreements are generally consented to, we see
45 that in terms of small to medium businesses.

45 We welcome the spotlight on this practice and we agree with the
difficulty faced in how to calibrate that issue and it is something that, as we

have said, we welcome the spotlight on how this could be looked at to avoid the issues that a number of parties have raised, however, allow it in those other circumstances or those legitimate circumstances. So in saying that, we will be looking to provide further comment on our written submissions, but
5 just wanted to highlight that at this point.

We also agree that the test regarding significant harm, in section 423 and 426, for terminating or suspending industrial action is set to high. We certainly agree with that view, which has come through a number of
10 decisions. However, perhaps where we've got some respectful disagreement is in the - as I have - - -

MR HARRIS: You can have disrespectful disagreement. It's okay. We're used to that too.
15

MR BARKATSAS: Yes - is with what we see is the implication test in section 424 regarding risks to health, safety or welfare is set too low. I may be paraphrasing somewhat, but that's the implication that we draw from that view. We'd point out the rejection of two such applications by the public
20 transport operators in Melbourne in the last week, where arguments regarding these demonstrable risk did not meet the test under the current formulation. Now, one of those decisions isn't fully published, but what we say is that they're examples that certainly the test, at the moment, is not set too low and perhaps it's something that in reviewing the draft report, it appears to be that
25 the issues that have come out of the taking of industrial action relate to the employees of the public sector, and the difficulty in doing so where it's the test for the moment for terminating or suspending that action - to use the Commission's - to paraphrase the report - is too low. Am I right in that - - -

MS SCOTT: I think we use the example out of the Northern Territory from memory. Have I got that right? The reference you are referring to?
30

MR BARKATSAS: Yes, it's AEU.

MS SCOTT: Yes, that's right.
35

MR HARRIS: So that's a problem. I mean, the public sector is a very, very wide construct, isn't it? I mean, you might say essential services might be a better example, but even then you could have industrial action within an
40 essential service that did not create potentially quite significant harm. The other example, I think, that was drawn to our attention is industrial action is like, for example, in the case of Qantas pilots wearing red ties.

Now, it doesn't threaten - well, it breaches a company standard for sure,
45 but - so you see, you don't want to say it's an essential service in all. This is the complexity; trying to write black-letter law for this purpose and so in the end we say to ourselves, "Are we actually doing anything useful here by

changing this definition?" But we are interested in this question, without a doubt.

5 It does seem, generally-speaking, that the Fair Work Commission has very, very limited capability in its own interpretation of the legislation, to be able to balance the interests of the third party, the general public, with the interests of the two protagonists, if I can just classify it two - potentially not accurate, I know, but just think of it as two protagonists, there may be more, but the third party being the general public and so we want to potentially
10 improve that, but we don't want to create a regulation - again this problem the specificity of black-letter law - that either makes it too wide an interpretation and therefore potentially prevents any industrial action from a party that should have a legitimate right to pursue that.

15 I see from the way you are nodding that you are not disagreeing with this. That's for the purposes of the record. So none of us are trying here to create an extreme circumstance, but all of us would like to creep toward something that is better. Would that be a, you know, sort of rough way of looking at it?

20 **MS BURRELL:** Yes.

MR HARRIS: We would like to find a better way of defining this question of significant damage to third parties.

25 **MS BURRELL:** Yes, and we had a couple of questions, I suppose, that we discussed within this parameter about whether there is merit or value in assessing the effect of the industrial action, perhaps, on an escalation scale or something similar, because at the moment, as you would be aware, the parties
30 are free to nominate a range of matters which can include stop work.

We would say, in the two public transport matters at the moment, industrial action in the form that it has come to seems to have happened relatively quickly, so there hasn't been a series of smaller events that have
35 been taken first. There is that option to jump, I suppose, to the ultimate stoppage in the ultimate pain on business. Probably one of the questions we had in our own mind was whether the Commission could have or should have a need to consider that impact, in terms of the specific industrial action that's been proposed.

40 **MR HARRIS:** So a demonstrable escalation kind of subclause.

MS BURRELL: Yes, potentially.

45 **MS SCOTT:** A requirement is what you're suggesting, basically. A requirement that that has to escalate through a series of steps.

MS BURRELL: Yes.

MR HARRIS: Okay.

5 **MS SCOTT:** Thank you.

10 **MR BARKATSAS:** We note that - we were not going to comment on it specifically, but there is a - I think it is a request for further information regarding employer response action and whether there is views about graduating, because at the moment the only response is a very blunt instrument of locking employees out and potentially, we would say is there merit, and we're posing the question, "Is there merit in similarly looking at the gravity of the employee industrial action?" And cognizant of - and as has been stated - the effect on the non-protagonist parties which, of course, in
15 Melbourne in the last week has been very severe. In fact, we're quite lucky that today we are in Bendigo.

MR HARRIS: So in practice, we're sort of discussing here some kind of provision that says action must be seen to be a graduated escalation in the
20 case of some essential services. Is that the sort of thing, in summary? I mean, I am not trying to tie you to that, I am just saying that's what we're talking about.

MS BURRELL: Yes. That's the concept that we think is worth having a
25 look at and even further, I suppose, outside the public sector and essential services; I mean, what we tend to hear from our members quite often is that, unless they fall into this range of essential services, they could effectively go to the wall under industrial action and their hand really is forced as to what choice do they have. There is absolutely no real mechanism for them to
30 terminate or suspend this industrial action, and they are left with a pretty stark situation of giving in or not. We have got a large member involved in a food supply chain, so their example that they discuss with me recently was if an application is lodged to the Commission and it is that all their drivers go off line, arguably there is no economic harm beyond the harm to themselves
35 and their suppliers.

They might have breach of contract and a whole range of issues that comes to them, but again the Commission isn't really able to consider that economic harm, unless it extends to that significant test to a sector of the
40 Australian economy which most the time it won't. So particularly, we do hear that quite often that apart from the lockout, there is not a lot that employers can do and there may tend to be a jump to this ultimate form of strike action and the pain on employers that that imposes can be quite significant, I suppose, and not leave the employer with a lot of room to go.

45 **MR HARRIS:** Did you have any ideas that you are willing to express today on what graduated options might be available for employers?

- 5 **MS BURRELL:** We had discussed, probably, that there would be groupings, potentially, of actions. So there's probably those that we call peripheral, which might include not wearing the uniform; there might be an extension into something such as a ban on overtime or potentially some of the work to rule provisions that we have seen, potentially no shift-swapping, for example, or roster changes could fall in that next level of category. I think then on that it may then be the stop work.
- 10 **MS SCOTT:** May I get you to come back to the topic about this idea of escalation available in the areas that are now outside the public sector and outside essential services? In practical terms, what the impact of that be if a union is determined to take industrial action and, in fact, requiring them to step through a series of events simply gets them to the same point relatively quickly. So in practical terms, what difference do you think it would make?
- 15 **MR BARKATSAS:** If I may, I think what we were discussing was the concept of in attempting to suspend or terminate the action it's considered whether there's been an escalation as opposed to a requirement that the action escalates, because then that may compound and snowball the action itself and ultimately wishing to get to that sort of high or that sort of end point of the most hurtful would likely be the stop work. So perhaps there might have been, as I see, two different ways of looking at it from the perspective of - - -
- 20 **MS BURRELL:** Is it in the first step or is it in the actual termination process?
- 25 **MR BARKATSAS:** Yes, in the consideration of whether to suspend or terminate there is a factor or a consideration within that as to whether there has been an escalation of the action.
- 30 **MS SCOTT:** Okay. Let's say there is a requirement that there has to be an escalation through a series of steps in eventually the stopping of work, how is that going to have necessarily changed circumstances to the - you know, the benefit of the economy if, in fact, you still get to this point where you actually have stopped work?
- 35 **MR BARKATSAS:** I think we're still perhaps talking about two separate - - -
- 40 **MS SCOTT:** All right. So you want to - you are only after the specification of the prohibited action in relation to the escalation process; Is that all you are after? Because you - go through your request again, I think.
- 45 **MS BURRELL:** Yes, and I think I have confused it in my thinking and talking aloud at the same time and we did discuss some of these points yesterday, and I suppose what we came to - it arose from the difficulty in

5 actually terminating or suspending the industrial action and that is where the idea came from to go, "Surely there must be some weight given if industrial action is just gone to the maximum amount straightaway," maybe that should be terminated or that there should be some consideration of that by the Commission in giving weight to the impact on that employer.

10 I suppose in practical terms - and I see the issue that you are getting at, "Where does it take you?" - it does at least, I think, take you back to your employee group and back to the negotiating table, because the Metro one, particularly, I think has escalated in really a short number of months to this point, and there is that ability to jump to the end point quickly.

15 **MR HARRIS:** Yes. What you are really saying, I think, is from the perspective of a third party. You're suffering the damage. Some businesses today haven't got employees at work, presumably, because of this. You're saying it might have been possible to avoid all of this if only you two parties had actually started out with a graduated, at the lowest level kind of response, "See, you better come back to the table, because here is my first indicator," and that first indication of preparedness take industrial action wasn't one that
20 created large impact on third party, such as employers generally. So you are saying, potentially, you might have avoided that cost if each of you have demonstrated to the other your seriousness of purpose via a lesser set of actions, rather than moving immediately to a most - well, quite powerful action.

25 **MS BURRELL:** Potentially, yes.

MR HARRIS: Is that the sort of thing?

30 **MS BURRELL:** Not definitely, but we think there is merit in it, because that bar is very high at the moment. It's kind of very black and white, it seems to be one or the other and tools are down, and there's no real alternative along the way.

35 **MR BARKATSAS:** So if we use that example of today, and without being privy to the details, of course, what a layperson would see is that bargaining has occurred for a period of time and then the industrial action has proceeded to that sort of highest level of a stop work. The employer applied to have that suspended or terminated, based on the current formulation of threat to public
40 safety et cetera and was not successful, and what we're saying is would there be some merit in part of that consideration of whether to suspend or terminate it is considered as to whether the graduation of all the escalation of the industrial action is disproportionate to where it sits in that process, and also factoring in, of course, the potential harm to the public and et cetera.

45 **MR HARRIS:** Sure. Yes, I think I see your point. In terms of this other item that we mentioned, this what options are available to employers short of

a lockout, and you mention things like perhaps cancelling shift-swapping arrangements or maybe not undertaking overtime and that sort of thing.

5 Presumably, those two have costs not just to the employee but to the employer potentially. I mean, overtime might actually be deeply desirable for both parties. It still seemed, to us, in looking at those sort of things you have some, what I might call “administrative actions” available to employers, but they are not - none of them seem to be of an equivalent graduated standard to that which is available to employees.

10

We were looking at those which could be considered literally a graduated - in other words, something less than a lockout, but something nevertheless that had the capacity for the parties to think, “Rather than this, maybe I better vary my negotiating stance, such that we come to this conclusion.”

15

Are there any other ideas beyond things which I think are probably administratively available to employers right now, so therefore aren’t again potentially part of law or you wouldn’t necessarily need to authorise them via black-letter was. Are there any other changes that you might have in mind? If you don’t have anything today, if you could discuss these internally, that would be very useful. It does seem - in our emphasis in the draft report, we have tried to say the whole purpose of the regulatory system is to provide some balance between the parties. This is one of the areas where the balance seems to be more in favour of the employee, should we get to the situation. I mean, well prior to that it is probably the imbalance is in the other direction, but once we get this situation, there is in law a limited evident mechanism of balance, so we are just interested if there are any ideas. We have globally and it is quite hard to find anything.

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So it is not surprising that you don’t have a stroke of genius idea today, but we are still interested in this area, if there is something that is both - you know, it would have to be workable as well. I mean, we’re not trying to put up something just for the sake of putting up something, but he is you could consider that internally, that would be useful and if there are any other ideas we would be interested in hearing from you on them.

35

MR BARKATSAS: Thank you. We will move on to our next core concern, which regards unfair dismissal access and also the procedures and the suggested case-management improvements.

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MS BURRELL: We thought that we would just probably commence this point - we note that the idea of small business exemption was potentially one for further consideration during this process, and I suppose it is just a matter of pressing our point on the difficulties that small business currently do find in responding to a claim. Over time, of course, we most recently moved from a system where the exemption was 100 or less employees was generally

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considered to be too high. We currently sit in the system where there is a code of conduct that can be used as a defence for small business with employees under 15, and our real concern is that that isn't working. The Commission is on record, and we've referenced this in our initial submissions, to say:

Whilst the legislation clearly intended the code to provide an expedited mechanism for the consideration of fairness in dismissals. In involving a small business I have not found it possible to do this in any other way than a detailed assessment of the criteria -

And on it goes. That very much is our experience of what is coming out of the Commission at the moment and in some ways it is almost a double barrier to have to demonstrate compliance with the code or otherwise and then the test of the merits or otherwise of the case.

What was designed to, I think, assist small business and be a very simple - almost a potentially and tick-and-flick checklist to check off some simple matters, in reality and in practice there seems to be no other way open to the Commission to determine other than the hearing which does take, of course, time and money and is particularly impacting a small, rather than a medium to large business that may be equipped to deal with that.

We have put forward the exclusion number of 20 and under, which is consistent with the definitions of small business for the ABS statistics. It is probably something that we understand there is no consistent level and there are many different views in what is an appropriate level or otherwise.

We think that level is that where there is generally unlikely to be any HR support within the business, the business owner is generally very hands-on in running the business and it seems to us to be a reasonable level to actually grant exclusion from the process, given that the attempts to cure the issues for small business in practice simply are not working, there is no win for small business in terms of how these matters have to be assessed, unfortunately.

MS SCOTT: And you weren't persuaded by the argument that a focus on the substance rather than the form in this case would provide a means to address the concerns that small employers do not have the HR support and therefore may fall foul of the regulatory requirements even though there was the code. We also noted what the Commission had said in relation to the code, but could you comment on whether you took any comfort at all from our focus on substance rather than form?

MS BURRELL: Generally-speaking, we think that's a very positive move and Nicholas will speak further to that in a general sense. For small business, we think that as it goes through and the cases that we have been looking at or

even seeing recently out of the Commission - and we will reference some in our written submissions - have still had that merit assessment on, you know, how for example the code at the moment states that the employer - I'll paraphrase - but their view must have been reasonable in the circumstances or legitimately held.

Now, I cannot actually see any way for the Commission to determine that view without conducting a hearing and it is probably the time and cost involved in any formal hearing that adds up to it. I mean, we have provided in our submissions, I think, around an average of 50 hours of representation time to actually go through a full hearing. Obviously, it is going to be more, with more witnesses, but it is certainly not insignificant for the small business and I think as long as they are in the system, there is always going to be that level of impost that we don't think, on balance, outweighs the protection, I suppose.

MR HARRIS: Currently, the system does provide with a longer period, doesn't it, before the unfair dismissal laws apply for small businesses and I can't remember - do you know is that based around the 20-employee mark as well, or how is a small - - -

MS BURRELL: Fifteen is the number at the moment.

MR HARRIS: Fifteen.

MS SCOTT: Fifteen, and it's 12 months.

MR HARRIS: Twelve months and 15.

MS BURRELL: The difference between a six and 12-month qualifying period.

MR HARRIS: Yes. So in that sense there is already a distinction in the law for small business.

MS BURRELL: Yes, there is.

MR HARRIS: But you're saying on preference, you would rather an exclusion from unfair dismissal in its entirety.

MS BURRELL: Yes.

MR HARRIS: There is though, the counter view though isn't there that says, well, that would enable anybody who has such a business to dismiss anybody for very unreasonable bases, isn't there?

5 **MS BURRELL:** Yes, that would be the counterview. And this is where, I suppose, there is always going to be a balance, I think, between what comes through the system, what designed to protect and what is the harm of having that system there in terms of time and money of defending potentially un-meritorious claims and our final - I suppose, where we finally sat on the matter is that we do think that there are grounds for exclusion; there are still protections, of course, around discrimination and unlawful termination and so forth, but in a practical sense we also feel to a certain extent that the working relationship needs to be positive.

10 If you are working in such a small workplace, ultimately, I think it would become very difficult to be working for someone who doesn't want you working for them. So in a practical sense we wonder if the harm outweighs the good in looking at the overall mechanisms and positive outcome of the come from this system.

15 **MR HARRIS:** Well, in part, of course, that was the substantive reason behind us saying the pre-eminent current objective of the legislation of restoration of employment is probably unwise and while we wouldn't eliminate that, we would say giving it a pre-eminent position probably doesn't seem to be a very practical form of thinking. That was certainly one of the perspectives of this substance over form, if you like, general thematic that we are trying to run in this area. So anyway, I appreciate your position.

20 **MS SCOTT:** Nicholas, I am conscious we are up to point 4, and you would want to get to point 6, I imagine, and we might move on, I think, because we are almost against your time allocation.

25 **MR BARKATSAS:** Sure, and look, I guess just on that point - one quit last point on that - certainly we welcome the theme, particularly in respect of unfair dismissals of substance over form. In terms of how that may cure the issues in terms of for small business for example, that is somewhat a Pyrrhic victory insofar as the substance over form may be upheld but that's still after a considerable amount of time and cost has been - - -

30 **MR HARRIS:** I think we know what you're saying about the real cost here.

35 **MR BARKATSAS:** Yes.

40 **MR HARRIS:** You're implying at least one under-appreciated cost is simply diversion of time.

MR BARKATSAS: Yes.

45 **MR HARRIS:** Both, yes, representation-wise and from the firm itself.

5 **MR BARKATSAS:** There was one other aspect in terms of the case management procedure for unfair dismissal where we stated that - sorry, we welcome the recommendation to deal with more or - the ability to be able to deal with applications on the papers. That's something that we were pressing for. We also consider the inclusion of a factor in the Commission's thinking before they decide on their process to require them to take into account the cost that would be caused to the business of the employer concerned by requiring the employer to attend the hearing, that was a factor that was in the Workplace Relations Act. It was section 648 before it was renumbered after the WorkChoices reforms.

15 Now, we say that ought to be sort of a very important and key focus of the Commission in how they determine which process ought to be utilised for a particular claim. Also in terms of on the substance rather than form - well, I might just move on from that. Also we agree with the recommendation to remove the primacy agreement statement. Lisa might speak about our core concern number 5.

20 **MS BURRELL:** Yes. The general protections, the note that the PC has recognised an issue with the current breadth of the protections, particularly around the workplace complaint, we obviously share that same view. I suppose the recommendation that the complaint is redefined, we would welcome. However, we also wonder if it may not be better in some ways to remove rather than renovate in this case. The reason we say that is we are certainly not advocating a removal of protections around discrimination and unlawful termination as has existed for a long period of time. However, we have struggled to find many, if any, genuine cases that have attracted protection under the complaints regime as it has been enacted under the Act.

30 Conversely - and we will put this in our written subs - we have got a number of examples where complaints during the probation period are travelling through to the courts. They are ultimately getting knocked out, but again the time and effort in defending these - and they are quite simple matters that I think any employer would be having multiple complaints from any employee in their system. The nature, as such, is going through; complaints about a back injury or complaints about days off work. We'll provide the case references, but they're very standard discussions that employers and employees have in the workplace that is later being connected back to the termination.

40 **MS SCOTT:** Yes.

45 **MS BURRELL:** We're particularly seeing it where there is no access to unfair dismissal laws, so there seems to be a high number of parties within the probationary period lodging these claims because they don't have another mechanism. We've got a witness statement in our original submissions which is probably typical. That's Ollie Gladwell, which is probably typical

of the example where most of the advice that they got in responding to this claim really seemed to be, “A commercial settlement is your best bet because you’ll probably win at the end of it, but you will have spent a huge amount of time and money. You can’t recoup your costs at all, because largely we’re in a no cost jurisdiction to all real intents and purposes.”

You kind of do go where does the employer go in the current system and what is this protected - if it’s not discrimination and it’s not unlawful termination, what real good has it brought, because we haven’t found any cases that we can point at to go, okay, that’s why it is there. Conversely, we find many cases that are travelling through to the courts getting knocked out. There are 3000 of these claims starting off in the Commission in the last annual report, or just under 3000.

The other thing we would probably just flag for your attention, which we didn’t comment on in our original subs, is the breadth and the way that this system is working at the moment has also produced somewhat of an “outside the system” approach from some no win/no fee lawyers that we’re aware of, who will write direct to employers and say, “We won’t go into the system where you won’t win or you will have to spend a lot of money and we’re prepared to settle.” I’ve seen things such as for six months’ pay even though the employee was there only a short time, or for \$10,000. Staggeringly, we are seeing these cases.

MR HARRIS: Can you append a copy of such a letter to your written submission?

MS BURRELL: Yes, if it would be treated in-confidence.

MS SCOTT: We’ll take it in-confidence, but, even better, you might also provide a copy with the relevant names blacked out to show us the style.

MR HARRIS: Yes.

MS BURRELL: Yes.

MS SCOTT: Because it would be good to be transparent about that.

MS BURRELL: Yes.

MR HARRIS: Because the question here may be more driven by the nature and practices in the legal profession than potentially by individuals. We would be interested in that.

MS BURRELL: Yes.

MR HARRIS: We're not saying necessarily we could do anything about it, but we would be interested in it. We have heard it alleged.

MS BURRELL: Yes.

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MR HARRIS: We haven't actually - I haven't, anyway - seen anything specific.

MS SCOTT: I haven't seen a letter.

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MR HARRIS: But we would be interested in seeing such a letter.

MS BURRELL: Yes.

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MS SCOTT: But we have certainly heard about particular levels of interest in activity in this area and the potential implications for it, so getting a letter even with things redacted would be fine.

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MS BURRELL: Yes. That would be good. Thank you. Some do travel to council, as I mentioned, but many don't, so I'm happy to look at what we can provide in that extent. There is a genuine belief, and I think it's a true belief, that if you do lodge a general protections at the moment, you're probably going to walk away with some form of payment just purely because of - the reverse onus is not difficult in and of itself, but it is time-consuming.

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That's where the real problem comes into play, where you've got something that we think often shouldn't be travelling through such as, you know, we've got one where an employee made a complaint about a colleague that was investigated. It was later found to be irrelevant. That employee was later made redundant and it attaches back to this original one. The fact that these types of things are even sitting in there, it's almost like a perfect storm for employers and that's why we've really pressed for the removal of them, because we legitimately can't see any positive outcomes coming out of it where protections were not previously available.

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MR HARRIS: I think we've found in this area of "rights", defining the right that you'd like to remove is the hardest task again without creating other collateral damage.

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MS BURRELL: Yes.

MR HARRIS: It's this working backwards of what is the right that you would invalidate, you know, or the apparent claimed right.

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MS BURRELL: Yes.

MR HARRIS: That seems to be the greatest difficulty here.

5 **MS BURRELL:** Yes. We would advocate that we think the previous ability of a complaint to a competent body or authority, as existed under the Workplace Relations Act, worked well. It was that attempt to extend that section in the Fair Work or grow upon that section that has led to this complaint in relation to someone's employment, which of course covers so many situations that would occur in everyday working life. We think the previous application did adequately afford protection.

10 **MR HARRIS:** Go back to the old Act.

MS BURRELL: Pretty much.

15 **MR HARRIS:** Okay. I think we're probably getting the hurry up on time.

MS SCOTT: I was doing that. I think we got to (5). We must be up to (6) now, are we?

20 **MR BARKATSAS:** We're up to (6). The last two are very, very quick. Our core concern in number (6) was in a general sense, but we note the proposed changes to the functions and the governance of the Fair Work Commission and the appointment process of members. We welcome those proposed changes, however, we continue our support in our written submissions for the AMRA proposal for an appellate body independent of the
25 Commission, which we would consider is a better mechanism for oversight and consistency of decisions.

 I guess in terms of clarity as to why that might be the case, picking up on the draft report's view of if those recommendations are brought in, they will
30 get to that same point or they will attempt or hope to get to that same point, what we would say to that is that that is effectively - the changes are a long series of contingent events to get to that particular outcome of consistency and improvement of the decision making, which is what the parties - or the submitters of the report have highlighted as an issue.

35 On the other hand, establishing that independent body is a targeted and more immediate solution to those issues and also I guess the proposed changes, whilst welcome, require a fairly long bedding-in period and somewhat glacial change whereby the establishment of that independent
40 body where parties are crying out for that more immediate solution, we consider would be more appropriate. The last point I'd like to raise is something that I flagged right from the outset regarding - - -

45 **MR HARRIS:** Long service leave.

MR BARKATSAS: - - - the portability and harmonisation of long service leave.

MR HARRIS: Yes.

5 **MR BARKATSAS:** Regarding the portability, it was a matter that wasn't
raised in our written submissions, but we're greatly concerned at the
potentially significant cost imposition on business for the portability of long
service leave and it is what we say is questionable and perhaps very limited
productivity benefits. We note a parliamentary inquiry is underway in
10 Victoria to which VECCI has made a submission strongly opposing the
extension of the existing long service leave framework. We concur with the
Commission's view on page 179 that there is simply no compelling evidence
of widespread concern regarding non-portability or compelling data or
evidence of productivity benefits offset that significantly increased cost to
business if long service leave was portable.

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Lastly, with respect to harmonisation of long service leave, our more
immediate concern are the proposals regarding portability. The current
framework of differences between the states is an administrative burden.
However, in the attempt to harmonise we would not wish to see an attempt to
20 effectively pull up the states to the highest common denominator as part of
that reform process. If there are no further questions, they are the points that
we wish to raise and we thank you for the opportunity to elaborate on our
submissions.

25 **MR HARRIS:** No, it has been a very useful contribution, so I would like to
thank your organisation very much for making the time and effort today.
There are one or two things that I've asked you to maybe give further
consideration to, so we'll probably be in touch orally from time to time.
Otherwise, I'd like to thank you for your contribution.

30 **MS SCOTT:** Yes. Thank you very much.

MS BURRELL: Thank you.

35 **MR HARRIS:** Good morning. For the sake of the record, could you
identify yourself, please.

MS SERTORI: Good morning. My name is Leah Sertori. I am the Chief
Executive Officer of Bendigo Business Council.

40 **MR HARRIS:** Were you here for our introductions? Do we need to
introduce ourselves?

MS SERTORI: I'm very sorry, I missed your introductions.

45 **MR HARRIS:** Peter Harris, Chairman of the Productivity Commission.

MS SCOTT: Patricia Scott, Commissioner.

MS SERTORI: Very nice to meet you, Commissioners. Thank you for the opportunity to speak with you today.

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MR HARRIS: Do you have an opening statement or general set of comments you'd like to make?

MS SERTORI: I have a very short opening statement and then we have five emerging themes from your report.

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MR HARRIS: Okay. Thank you.

MS SERTORI: Bendigo Business Council is a small business association. We have 620 members. We have quite a diverse membership base, including a number of social enterprise, not for profit organisations, large business, but predominantly our membership are small and medium enterprise. Within our municipality, we have 7500 registered businesses, 85 per cent of whom have less than five staff. I just think it's interesting to note that Bendigo has the strongest growth in gross regional product for a regional city in Victoria. We now have about \$4.5 billion as the value of our GRP, so the issues that are raised in the Productivity Commission report are of interest to our members and we've had some interesting discussions around them in the last month or so.

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I would just raise that because Bendigo Business Council is a small chamber, our capacity to effectively facilitate a dialogue with our members around some of these more complex issues is constrained. As such, what we're discussing today are five themes that have emerged from those conversations.

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MR HARRIS: Sure.

MS SERTORI: We won't present a definitive position as VECCI do, because they have more expertise in this field and have the resource to do a deeper dive into understanding the issues.

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MR HARRIS: Yes.

MS SERTORI: Our methodology in terms of forming a point of view has been to share the report with our members, encourage members to read the summary and digest the recommendation as much as possible and then to draw out members' interests and concerns in conversation in focus groups, and then more informally at events. Last night we had 170 of our members come to an event called "Setting the agenda for business in Bendigo" at the town hall and a number of members came and shared part of their view.

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What I'm going to present this morning are five emerging themes from that dialogue. The first thing I would note is that there was no absolute consensus around any of the recommendations put forward. It is relatively complex and the views presented back from our members certainly reflect that. The first emerging theme and the strongest theme from a Bendigo perspective was the notion that prosperous businesses require prosperous communities, and there was a sense that - particularly from our retail sector - we don't want to see a lowering of the minimum wage.

To add to that, there was a sense that we need strong confidence around spending, particularly at a local level, and that we need to ensure that as a community we're working hard to engage our young people in employment. Another part of the conversation was that our youth unemployment rate in this area is close to 19 per cent - I think it's 18.8 per cent - and a number of employers in the retail hospitality and tourism sectors were saying, you know, "If we had a flat rate across Saturday and Sunday, it would enable us to employ more of those young people who are currently out of work."

That leads me to the second theme, which is around the notion of penalty rates on Sundays being aligned to the Saturday rate. I must just again state that there was no consensus within our membership around a view on that issue, but there was a strong theme emerging from the retail sector, from the hospitality sector and the entertainment sort of industry that - there was a view that if the Sunday rate was reduced back to the Saturday rate, there would be increased opportunities for employment.

MR HARRIS: Yes.

MS SERTORI: That it would reduce the cost of trading on those days and, therefore, businesses would be more likely to open on a Sunday. In central Bendigo at the moment you could shoot a cannon down a number of streets and there is not a lot of activity going on. The City of Greater Bendigo Economic Development Strategy does very clearly state that tourism is a major area of growth and that the city's strategy around visitor attraction is very much linked to having activities for people to come and do; but when we talk to our members who are operating in that space, they do say, "Look, the cost of wages is one of the most significant barriers to us not opening those days or to us opening those days." They're not all trading on Sunday at the moment. That was the second issue.

The third theme that arose through those conversations was around the complexity of the current award framework and the amount of time that it takes to determine which award is the appropriate award for business to be paying. There was a sense that that framework could be simplified to make it less likely that an employer - not through ill wish, but just simply being confused about which award they should be paying, would be less likely to make a mistake.

5 The fourth theme that emerged was around unfair dismissal. In this instance, we would support VECCI's view. A number of members raised the notion that the definition of "small business" should be lifted to 20 employees and that 15 was considered too low. Again I just note that there was no consensus within our membership around that. It was a theme that emerged from a handful of members who approached me directly.

10 The fifth theme - and again we would concur with VECCI's view around this - is in relation to the portability of long service leave. Particularly for small and medium-sized enterprise, the idea that you could take on a new employee who comes to you with that liability is of significant concern. Again, we don't understand the potential economic benefit of introducing such a scheme.

15 **MR HARRIS:** Thanks very much for that. We're just as interested in hearing from any part of the community on what I might call generic views on the nature of the system, as we are on the specifics of recommendations; although you did touch in passing on one or two of those. This is not limited to just what we recommended. It's the generality. I appreciate you're not here presenting yourself as an industrial relations expert - - -

MS SERTORI: Certainly not.

25 **MR HARRIS:** - - - or anything else like that.

MS SERTORI: No.

30 **MR HARRIS:** Of the themes, I think we understand the link between a prosperous community and not forcing down something like the minimum wage. That's reasonably logical and we see the benefit, to use youth unemployment, for example, of if penalty rates are varied and there is increased employment opportunity particularly in those sectors where youth employment is significant, that could be of benefit.

35 The one that I was intrigued a little about is complexity of awards. We hear a lot about complexity of awards and our difficulty when people say they're complex and, in particular, we understand from an employers' perspective - particularly an employer without a large human resources department and access to all the legal expertise that that might entail, as well
40 - can make mistakes. It has been suggested that we should have fewer awards. There has been a big effort made to reduce from 3000 or something or some people even say larger than 3000 - down to 122 awards. In the discussion that you had with the community, what is their - because
45 complexity is different from number and yet often they're conflated.

MS SERTORI: Yes.

5 **MR HARRIS:** People called one the same thing. The commentary was concern about making a mistake. You could potentially, I guess, envisage a fewer number of awards as being, “Oh, it’s easier to find where my employees live,” but if it was just reducing the number of awards in number, but not changing the complexity, presumably there wouldn’t be much value in that.

10 **MS SERTORI:** Benefit, yes.

MR HARRIS: In other words, the number isn’t really the objective. Did anybody comment at all on that? I’m not asking you just for you alone. We’re going to ask this around the country of people, because the general statement has been made fewer is better and we want to be convinced that
15 fewer is better, because in our report we didn’t really go down the fewer is better path.

MS SERTORI: When our members have raised that issue, the question that I posed to them is, “Well, how do you navigate that and where do you go?”
20 It’s interesting that people go to a number of different sources for advice. Some people will go to their local lawyer and others will go to VECCI and seek advice via the helpline. Some others will do a Google search or go the Fair Work web site and read a number of different award classifications, and try and make a call themselves.

25
It’s the third group that we’re probably concerned for in terms of their method of landing on what they think is the appropriate rate, so there are a couple of things that our association has sought to put in place for members to make that easier. We do have an alliance with VECCI now where our
30 members can become members of VECCI at no additional cost. That has been extraordinarily beneficial for our members in terms of more effectively navigating that system, but that’s just a theme that comes up. I really am not qualified to comment about whether a reduction from 3000 to 150 is going to solve the problem.

35
MR HARRIS: No, I just asked in case someone had passionately given you a view. In fact it’s something we’ll primarily get from the businesses themselves, I think. Since you were in touch with a set of them, I thought I would ask the question that way; but I didn’t necessarily want to try and put
40 you on the spot. Patricia, is there anything that you want to - - -

MS SCOTT: No. I think people tell us that the FWO helpline can be very good, but I suppose you’ve got to know it’s available to assist you.

45 **MS SERTORI:** Yes.

MS SCOTT: Will you be making actually a formal submission?

MS SERTORI: We will, yes.

5 **MS SCOTT:** All right. Maybe as that is written up, you might just see if there was any knowledge or use of the phone line, to see whether that proved to be useful or not. Thank you.

10 **MR HARRIS:** We're not going to hold you up here at this stage if there wasn't anything else you wanted to go on with.

MS SERTORI: No.

15 **MR HARRIS:** But it was a very useful contribution. As I said, we're not just here for people to tell us, "We like this recommendation, we didn't like that one." The general response is still of value to us. Since the Commissioner has asked you to go back on one specific issue, if you can just ask about this complexity of award.

20 **MS SERTORI:** Yes.

MR HARRIS: Is it driven by the number or by the - because obviously from the nature of our report, we're actually saying we think complexity issues are driven by content. We have a proposition for how the Fair Work Commission might go about reforming complexity issue by issue rather than
25 award by award, but we are interested in commentary on that. Anyway, it's worth asking.

MS SERTORI: Thank you, and thank you for the opportunity to provide that sort of more general response. We did seek to understand whether our
30 membership had a very clear and definitive position on some of those recommendations and it was interesting with the diversity of response that we received. We just were unable to determine a really clear position.

35 **MR HARRIS:** It's probably reflective of the community. I mean, no one is expecting that there is a monolithic view out there.

MS SERTORI: Yes.

40 **MS SCOTT:** Leah, would I be right in thinking - I might be entirely wrong - that the order in which you presented things may also reflect in your mind the priority that your interlocutors had to those issues?

MS SERTORI: That's correct, yes.

45 **MS SCOTT:** Okay. So that's very useful, too.

MR HARRIS: Yes.

MS SERTORI: Thank you.

5 **MR HARRIS:** Thanks very much. Also you've created a great benefit; we're ahead of time now. I was in danger of being criticised for being behind time.

MS SERTORI: Thank you.

10 **MS SCOTT:** We can actually take a little break, I think.

15 **MR HARRIS:** I don't know, he says, asking the audience, whether the Australian Nurses, who are next up are here, are here - he says, optimistically. No, they're not. That means there are scones at the back. If there aren't scones, there's something like scones at the back if anybody wants to - so let's have 10 minutes off and have a scone.

ADJOURNED [11.57 AM]

20 **RESUMED** [12.08 PM]

MR HARRIS: I think we can have the Australian Nursing and Midwifery Foundation, Victoria, if they're here.

25 **MR HUBBARD:** We're here.

MR HARRIS: Excellent. Could you introduce yourselves, please, for the sake of the record.

30 **MR HUBBARD:** Leigh Hubbard. I'm a senior industrial officer for the Victorian branch of the Australian Nursing and Midwifery Federation. With me is Mr Damien Hurrell, who is an ANMF job representative here at Bendigo Health. He has been for many years.

35 **MR HURRELL:** At least 10 years.

40 **MR HUBBARD:** At least 10 years. Also Loretta Marchesi is here somewhere. She is our Bendigo organiser. She will also make a contribution at some point. I'll probably do most the speaking. Damien will supplement and we'll go from there. We'll probably just start off with a few minutes and then questions.

45 **MR HARRIS:** That will be great. We'll do it again: Peter Harris, Productivity Commission Chairman.

MS SCOTT: Patricia Scott.

5 **MR HUBBARD:** Thank you. I went to one of the earlier round tables that the Commission had many months ago now. I'm not sure exactly when it was; late last year or earlier this year. I think things have moved a long way and from the size of the draft report, there is a lot of work been done. We are only obviously going to be able to skim across the surface of it this morning.

10 In terms of what I suppose out of the draft report concerns us as an organisation - and some of the background to our organisation is there on the front of the speaking notes. I hope you received those from us.

MR HARRIS: Yes.

MS SCOTT: Yes, we did.

15 **MR HUBBARD:** We are clearly a union. We're a union of around 73,000 financial members in Victoria. About half our membership is in the private sector, half in the public. Around 100 per cent of all our members are in private acute, so that's hospitals - private hospitals and public hospitals - covered by enterprise agreements. That obviously dips, trails off, the smaller
20 the workplace becomes. It becomes in, say, medical centres much more difficult for us to obtain enterprise agreements per se.

25 In private aged care, we've probably got about 95 per cent of the 540 facilities, or 50 facilities in Victoria, covered by enterprise agreements. We have a quite diverse workforce. It covers everything from our personal care workers who are what we would regard as low paid, right through to directors of nursing in public and private hospitals, so it's a fairly diverse workforce and a diverse membership. Our membership is around about - of registered nurses and enrolled nurses in Victoria - 72 per cent of all nurses registered to
30 practise in Victoria, so we've got a high penetration or high density of membership across the sector.

35 Just quickly - and clearly you'll obviously want to ask questions of some of the things we've put - if I went to the things that are really of most concern to us in terms of the draft report, I think the enterprise contracts would be of particular concern. There was a suggestion of enterprise contracts. I know it's a thought. It wasn't necessarily a recommendation, but it's sort of a thought - - -

40 **MR HARRIS:** It's a design solution to an apparent problem and the question is does the design attract and is the problem real?

45 **MR HUBBARD:** Well, I suppose our comment on that is we think it's an apparent problem. It's like apparent wind when you're sailing. It's not real wind. It's not actual wind. We think that in fact there are solutions for smaller and medium businesses that are there. We think the current system has a pretty good balance, because bargaining in the current system is not

restricted to unions and employers; it can be employers with their workers. We think that employers talking to people in any workplace, whether it's five people or 50 people, is a good thing.

5 We think that under the current arrangements where you have a structured system of a process of sitting down, agreeing to bargain, talking to people, coming up with a document, putting that out for circulation, having a ballot, it's not a difficult process and it's something that is achievable even by relatively small business. I keep hearing how complex it is and how
10 difficult it is. We deal with a lot of small businesses and when we actually sit down with them, they don't find it that difficult and they don't find it that complex.

15 **MR HARRIS:** What would a small business be for you, when you say you deal with a lot of small businesses?

20 **MR HUBBARD:** Well, a small business might be a medical centre where there are only two or three nurses present or it might be an aged care facility where the workforce might be, you know, 40 or 50 people, although these days aged care facilities are becoming bigger so your average kind of workforce is probably closer to 70 to 120 for each aged care facility.

25 I suppose what we're concerned about is this suggestion that you have this hybrid - employers now are very small employers. The award sits there and they have within those awards individual or award flexibility arrangements which can be altered relatively easily by sitting down and putting in writing what they want to alter. We think the introduction of a third path between - you know, especially one that has opt in/opt out of the agreement - brings us virtually back to where we were under WorkChoices.

30 In a sense you've got these - as you had AWAs, where you could sign up to an AWA, it was lodged and that was the end of it. There was no assessment of it. I know you suggest that it be lodged and monitored, but there's no suggestion that it be effectively approved - - -

35 **MR HARRIS:** Approved.

40 **MR HUBBARD:** Assed and approved. We've got great concerns around that. We think that, (a) it could be used to undermine collective bargaining, which we see both internationally - as Australia's obligation to promote collective bargaining under the international conventions. We see that that's a cornerstone of the system. We could see these instruments being used as AWAs were in some larger corporates back in the early 2000s - Telstra comes to mind - as a way of undermining collective bargaining or forestalling
45 collective bargaining. To us that's a retrograde step. It's a step backwards.

5 I think your overall assessment that the system is not broken, that the balance is in fact we think not too bad - I mean, we'd like in some areas for it to go a bit further in the opposite direction than perhaps you would as a Commission, but we think the system is pretty good, especially around the bargaining. We don't necessarily see the need for this instrument, particularly one which is determined by the employer - can be imposed on a new employee or indeed a current employee could be inveigled to kind of sign it. It's then lodged and there's no assessment or approval process of it.

10 It just strikes us that that's not unlike - whether the non-union collective agreement back under the Howard era, WorkChoices, where you had the Workplace Authority and it just sat there as a rubber stamp. There wasn't an open process. One of the great things about the Fair Work Act is even if we are, as a union - sometimes we are. Our members say to us - they might be in
15 a very small regional town and they'll say, "We're going to approve this agreement. We'll vote for it." We say to them we recommend that they don't or they do.

20 At least there is the Commission when you say, "Look, there are things in this agreement that are below the National Employment Standards or don't meet them." There is an open process for resolving that. It's usually a pretty quick hearing. The Commission will seek undertakings around those matters and you've got an open process. With what you're suggesting with employment contracts, there is no process or no open process and transparent
25 process. To us that's a key problem with the suggestion.

30 The other thing I think we've put in our speaking notes is the vulnerability of many people. You know, migrants, visa holders, students, people in regional areas where there are no other jobs who will actually be forced into signing something either because they have to or because they don't know what the alternative is. We found that back as early as the Kennett employment contracts, back in 1993, until they handed over the system to the federal government.

35 Many of the submissions I saw regurgitated those figures; about how many of those either AWAs or non-union collective agreements had dropped out things like penalty rates, overtime, whatever, all the standard provisions. They just stripped them from those contracts. So we think that your suggestion - you may not have intended it as that, but it has the capacity to
40 effectively replay what was some pretty undesirable outcomes and pretty undesirable behaviour on the part of some employers. I'll leave that one at that. We've put some material in there.

45 **MR HURRELL:** Can I just speak very briefly to that?

MR HUBBARD: Yes.

5 **MR HURRELL:** I work in a specialist field of nursing. I'm an intensive care nurse. I've chosen to live in Bendigo, but what that means is that for me to actually apply my skills, there's really only one show in town and that's a particular employer where I work. If it were the case that my employer was to provide a contract that was unacceptable to me, I would be placed in a very invidious position; a choice of either working under circumstances that I don't believe reflect my skills and what I deserve to be recognised as or to travel an hour and a half each way, plus, to the nearest alternative.

10 I have many colleagues who are in a similar position and it would be very concerning for us to be placed in that sort of position if such an agreement was to be used in that way.

15 **MR HUBBARD:** Sure.

MR HARRIS: Is it okay if I - I don't want to interrupt your flow, but can I ask questions as we go? Is that all right?

20 **MR HUBBARD:** Yes.

MR HARRIS: The enterprise contract model as we put it forward had four safeguards in it, so not no safeguards which some people have suggested was - we're not trying to do a comparison with WorkChoices here.

25 **MR HUBBARD:** No.

30 **MR HARRIS:** But I hear the terminology used. One of them is it's for new employees. In other words, existing employees have a choice about whether they take this up or not. You can argue whether or not that is a safeguard. I mean, some people would say it isn't. Some people would say - but the way we look at it is, well, when you're first a new employee, you get offered something that has either been negotiated under the EBA and you weren't involved in that, because you're a new employee. It was done by the previous bunch of employees - or it's under an award and you weren't involved in that necessarily. In other words, the offer is the offer. We call that about the same.

40 The other three were no disadvantage test. That's clearly going to be applied. The only question is against what? We've said the award, because we're seeing this as being primarily driven around the sort of businesses that are involved in awards and haven't moved to enterprise bargains or anything else and therefore don't appear to have had any flexibility options. On the other hand, they might have some and they might not be valid. Who knows? Then, for existing employees, it would be a choice for them.

45 So in terms of your model in the ICU - working in the ICU - even if you're an employer under this option and decided to go to an enterprise

contract, you as an incumbent employee would retain you current position, unless on looking at it you decided this was actually a better deal for you. Even if you did, you would get the choice of the remaining safeguard which is after a year you could decide, "That's not actually as great as I thought it was. The employer misled me and I want to go back to" - and it would be a statutory offence to sack anybody in such a circumstance who chose to go back to the award provision. I'm not here to sell this. I'm just trying to make sure that we're talking on - - -

10 **MR HUBBARD:** Sure.

MR HARRIS: Because my questions are going to be based around that and so my first question is the concern I think you're expressing is one about a new employee really rather than an existing employee. I just need to get that sort of clarified for the purposes of the record. We do take quite a lot of note of what's said in these - - -

MR HUBBARD: I understood from the document - - -

20 **MR HARRIS:** It's the new employee.

MR HUBBARD: Yes. I thought there was some ambivalence about that in the document, about whether somebody could opt out of the agreement and into the enterprise contract. My understanding was there was a suggestion that that could occur; they could opt out of the agreement.

MR HARRIS: Yes.

30 **MR HUBBARD:** To me - and you'll note in my talking notes, there is a little bit of - I know in the very back of the draft report there's kind of a very small - there are a few pages around international obligations.

MR HARRIS: Yes.

35 **MR HUBBARD:** But there is not much real - I mean, what Australia has signed up to in terms of the core conventions of the ILO is the right to organise and collectively bargain. Basically our obligation is that collective bargaining - and that's what this Act does, unlike the previous legislation which had statutory individual arrangements - - -

40 **MR HARRIS:** Yes.

45 **MR HUBBARD:** - - - and statutory collective arrangements up there on the ladder virtually side by side. What the Fair Work Act did was re-establish the primacy of collective bargaining. What we would say is even if you do have these safeguards around them, they will be used to undermine the primacy of collective bargaining because they will - - -

MR HARRIS: Okay.

5 **MR HUBBARD:** In some cases by big corporations they will be used to pay a premium to some workers, or new workers, to get out of the enterprise agreement, just like the mining companies did back, you know, 10, 20 years ago. In some cases they'll be used to try and undermine the standards that may well be above the minimums in the award; so they may say new employees won't get certain entitlements.

10 It could cut both ways. I'm not saying that these employment contracts might not in some cases provide better benefits than the agreement or the award. I'm just saying to me philosophically in a workplace - and you've got to think about the future of your workplace, too. I mean, I would have
15 thought that having a unified workplace where people are effectively on the same base conditions is good for harmony. It's good for a motivated workforce, et cetera, for productivity.

20 An unhappy workplace where people think some people are on one thing, some people are on another, is not a good idea for business, I would have thought generally. That's not to say that private arrangements above the minimum can't sometimes be made. As we know, if you've got special skill needs or shortages, people are often making private arrangements with people to pay them more or whatever.

25 **MR HARRIS:** And casual versus permanent.

MR HUBBARD: Yes.

30 **MR HARRIS:** There are people doing the same work side by side, but on different engagement processes.

MR HUBBARD: Slightly different arrangements. I was going to come to that, because I see there is a suggestion - just to change the subject slightly,
35 we have made some comments about your suggestion that the regulation of casuals be excluded from agreement-making. We find that a bit strange. We can understand the distinction between labour hire or independent contractor - one being a contractor and one being employed by someone else other than the employer who runs the workplace - but a casual employee is an employee
40 of the employer.

45 In fact, in our industry, we have in our agreements lots of - the casuals are just as subject to the agreement. They get the same conditions. The only thing is they don't get the leave, they get the loading. In fact even more than that in aged care, where we have probably 200 agreements in Victoria. The employers are very insistent that they have a casual conversion clause which cuts both ways. In other words, an employee can ask to be converted to

5 permanency after six months of regular casual work, but so can an employer, because, believe it or not, many employees say, “Well, look, I’d rather get the 25 per cent than” - whereas many employers say, “No, I want somebody who feels they’re part of the workforce. They get the training. They’re obligated to come and get the skills.”

10 We have a clause that actually has a reciprocal arrangement where the employer can ask the casual employee to become permanent and that request on both sides can’t be unreasonably refused. We think it’s really important that the whole workforce who are genuinely employed by the employer, should be covered by the agreement. It’s very important that that regulation occur. I don’t know why the Commission came to that view, but it seems to us that casual employees from our perspective are just as much employees as any other employee. The unions don’t just represent - - -

15 **MR HARRIS:** Can you just tell me where this is, because I don’t recall us being that - - -

20 **MR HUBBARD:** I don’t understand the purpose - maybe I’m misinterpreting the - - -

MS SCOTT: I think there is a misinterpretation going on.

25 **MR HARRIS:** The only thing I can remember on casuals is - - -

MR HUBBARD: Unless you’re saying that an employer can’t employ casuals.

30 **MS SCOTT:** No.

MR HARRIS: No. I don’t think we actually recommended - - -

MR HUBBARD: 19.1, it mentions casuals.

35 **MS SCOTT:** 19.1.

MR HUBBARD: Not 19 - where was it? Is it 20?

40 **MS SCOTT:** No, it’s not 19.

MR HARRIS: There is a provision on casuals which says - we asked for information on whether there is a trade-off opportunity for casuals. That’s the only one I can - - -

45 **MR HUBBARD:** Page 60.

MS SCOTT: Page 60, yes. There is an element about restrictions of engagement.

MR HARRIS: I see, 20.1.

5 **MS SCOTT:** Yes, but this is about - the context of that - - -

MR HUBBARD: Is restrictions.

10 **MR HARRIS:** Is to restrict the employment of casuals.

MR HUBBARD: Okay.

MS SCOTT: It's not to - - -

15 **MR HARRIS:** What we're saying here is - sorry you go on.

MS SCOTT: This is about areas where there is an attempt to restrict the use of casuals in the workplace or restrict the use of a labour hire or so on; terms that restrict the engagement. It's not saying that casuals can't be covered by EBAs.

20 **MR HUBBARD:** Okay.

25 **MR HARRIS:** In fact we would want people covered, because I don't think we'd disagree with you, they are part of the - - -

MR HUBBARD: Thank you for that clarification, but my point still stands that employers and employees should be able to come to an agreement about how casuals are used and how casuals are engaged. I think in a workplace, for example, in our industry where you're looking after say aged care where you want continuity of care for older residents, you don't want somebody who is a casual who comes in on an ad hoc basis. You want people with regular shifts.

30 **MR HUBBARD:** There is this sort of misnomer about regular casuals. What I'm saying when I say a casual, I mean somebody who is coming in and out of the workplace on a seasonal or ad hoc basis.

35 **MS SCOTT:** But you would have a lot of members who are in fact regular casuals, wouldn't you?

40 **MR HUBBARD:** No, but we try and limit it and so do the employers because it's not in the best interests of the residents who live in these aged care places, it's not in the interests of the workforce. For example, we know from the statistics that casuals get less training. We know they're more likely to be injured at work. We know all kinds of things about casual and

45

fragmented work that is not healthy, apart from the fact they can't get bank loans to buy a house.

5 **MR HARRIS:** Okay, well we need to extend it probably beyond the area that you cover to the remaining economy-wide.

MR HUBBARD: Yes, sure.

10 **MR HARRIS:** There are significant parts of the workforce who are long-term casuals and I think you mentioned it yourself, some people do actually seek out being casual because they prefer the cash versus the conditions; and I think what that proposition therefore is meant to be is a generic one across the economy which attempts to limit an individual's right to seek a form of
15 employment, which says, "I would prefer the loading to the guarantee of holiday pay" or long service leave or something.

20 That suits a particular set of individuals in a particular set of circumstances, and some of them are wholly socially deserving people, people who necessarily can't work more than three days a week for fear of jeopardising their benefits under the tax and transfer system, particularly family benefits, and so they necessarily by their nature are casuals and want casual employment and have an agreement which says you can't have casuals.

25 We currently have therefore more than X per cent of the workforce or something - it seems to be an impediment to that particularly socially deserving set of people actually getting employment and we're saying it doesn't seem to be terribly wise. So I might understand in your - - -

30 **MR HUBBARD:** Yes.

MR HARRIS: I appreciate the workplace safety issue. Don't get me wrong.

35 **MR HUBBARD:** Yes.

MR HARRIS: I wasn't trying to be disrespectful towards that. In some circumstances there may be a basis for it but we were looking at the generic across the economy. For a substantial group of people that's quite important, to be able to seek casual work.

40 **MR HUBBARD:** And I suppose what I was pointing out is - and I'm not denying the diversity of the economy or the workforce and the types of - but what I'm saying is it's a bit like your - and I'll come to penalty rates in a minute, but trying to say "Here's what will happen across" you know, for
45 casuals you can't regulate them. It's far better to do what you have now, is where casuals could be regulated under an agreement but that there are ways within the - like, you've got your individual or award flexibility arrangements

within agreements and awards now. They're a mandatory term that has to be there.

5 **MR HARRIS:** But that's once they're inside the work space as you know, under the individual flexibility arrangements to enter.

MR HUBBARD: Yes.

10 **MR HARRIS:** For that particular person who only wants casual work, wants temporary work for the purposes of preserving another kind of benefit, they've got to get into the workplace. They can't do it under an individual flexibility agreement at the moment.

15 **MR HUBBARD:** Sure.

MR HARRIS: And so - - -

20 **MR HUBBARD:** I mean, look and I can't comment on it because I don't know - and I look at a lot of agreements. I don't know of too many that totally restrict casuals. I simply don't.

MS SCOTT: Well - - -

25 **MR HARRIS:** No, and we might want to do some work ourselves, more work on just that. I'm not therefore dismissing the fact that you've drawn attention to something that could be significant. But we had what we think is a perfectly reasonable rationale for why you wouldn't want to restrict the employment of casuals. On the other hand you would want to have in the agreement the basis on which you would employ casuals. So there was
30 obviously a misunderstanding there.

MR HUBBARD: Okay.

35 **MR HARRIS:** And it's good that we've clarified at least that.

MS SCOTT: It might be useful though to see the sort of clauses that you're referring to in your agreements.

40 **MR HARRIS:** Sure.

MS SCOTT: That you feel would fall foul of this recommendation, this draft recommendation, so that we can have a look to see "Aha. Well, you know, clearly that is not what we intended" or whatever. So if you could
45 give us some examples of those that would be very helpful.

MR HUBBARD: Yes, sure. We can certainly provide a copy of that clause. I'm not sure it falls foul. I mean, none of our agreements say, "You can't

employ a casual”.

MS SCOTT: Right

5 **MR HUBBARD:** But what they do say, if you do employ one the employer can - or vice versa, the employee can put pressure on to turn you into a permanent because - - -

10 **MR HARRIS:** Yes. No, no, we’re not against that.

MS SCOTT: No, no. No, we’ve got actually - - -

MR HARRIS: We’re not against that.

15 **MS SCOTT:** We’ve got a discussion in the report about conversion.

MR HARRIS: Convertibility.

20 **MS SCOTT:** Convertibility of casuals to permanents and seek views about is that - - -

MR HURRELL: All right.

25 **MS SCOTT:** Is there a means to achieve that convertibility in other ways, so.

MR HUBBARD: Okay, we’re happy to provide those clauses.

30 **MS SCOTT:** Thank you.

MR HARRIS: Yes.

35 **MR HUBBARD:** In terms of I think the enterprise contracts, I think we’ve most - the speaking notes have a reasonable amount in there. I think there are two areas. One is that they’re not assessed and approved and the other is people being compelled or virtually compelled as new employees in particular to take it or leave it in the sense of “That’s what’s on offer”, and we’ve had that in the past with AWAs, there’s no doubt, and before that the employment contracts in Victoria in the '90s.

40 There was clear evidence of that and as I said the - and we raise that point, and I think others will raise the point. But I think the Commission does accept that there’s an imbalance of power, especially as the workplace becomes smaller there’s an imbalance of power towards the employer. So
45 something that is not negotiated, employer-derived and is not subject to checking or assessment is a problem we think.

I think at page 6 of your report you kind of implicitly accept and you say no one quibbled with the fact that there is an unequal bargaining position. So we're certainly - - -

5 **MR HARRIS:** That's the going in proposition. We can - in other words that's the basis on which regulation should occur in the first place.

MR HUBBARD: Yes, and so a - - -

10 **MR HARRIS:** Because we want to ask the threshold question and answer it, and that's the basis we say there is a case for regulation.

15 **MR HUBBARD:** That's why we have a real problem with employment - apart from splitting the workforce so it - undermining collective bargaining. I think that's a real issue. In terms of industrial action and pattern bargaining, pattern bargaining - and I think Damien's going to make some comments too about industrial action. There's a number of aspects to this. One is around the balance.

20 We as a union - well, say for example I think we probably have conducted one of the largest protected industrial action ballots in the country of around 35,000 members. It is a highly onerous, time-consuming and costly exercise for very little purpose. It's about getting the 50 per cent of your members plus one or at least 50 per cent of your members to vote in the ballot. You know that 99 per cent of them are going to support, or 25 98 per cent are going to support the industrial action.

 To me, and I think to our union, it's a very costly exercise. It's an organising opportunity for us, so we don't begrudge it in that sense. We can 30 talk to our members and that's a good thing, and get them angry with the employer at various times. That's a good thing. We just had one with Cabrini Health only last week and that was a good exercise. But to me - and I think the ILO has criticised the 50 per cent threshold as being far too high and far too onerous. So we agree with that.

35 In terms of being able to commence industrial action before bargaining has commenced and the J J Richards kind of case, our view is that employees have got a right, in our view, to get their employer to start bargaining. And if getting them to start bargaining is by taking industrial action because an 40 employer stonewalls and simply will not meet, then they've obviously got another option, that's a majority support determination, but you've got to get again to 50 per cent.

 I mean, if the Commission was suggesting that a majority support 45 determination wasn't 50 per cent, that it was you know something more realistic or better like 25 per cent, I might have more sympathy with the idea that workers shouldn't exercise a right to take industrial action. But that's

not the case and I would have the view that employees have a right to organise, they have a right to collectively bargain. Whether that's 20 per cent of the workforce or 50 per cent or 70 per cent is irrelevant, and sometimes it is hard in a workplace.

5

We have done a number of majority support orders but it is hard to get the 50 per cent sometimes. So in - you may only have 20 per cent membership or 25 per cent membership of the union in those workplaces. You've got to go out and again it's - I don't decry it, because it is a good organising opportunity for unions but it is an onerous thing. Now we just don't think that it's a bad thing.

Now it may well be it's used as a tactic somewhere else in another industry, you know, construction, I don't know, offshore petroleum and gas. But the fact is in our industry if an employer says, "I just want to bargain. I'm not interested" - and we've got a New Zealand employer who has come into Victoria who says that, we don't see why our members shouldn't be - should be denied the opportunity to apply for a protected industrial action ballot order. We just don't see what the logic is.

20

MR HARRIS: Well, I think - - -

MR HUBBARD: Why would you deny it?

MR HARRIS: I think the logic for us was you trigger a bargaining period. The first thing you should do on entering a bargaining period is sit down and seek to bargain.

MR HUBBARD: Of course.

30

MR HARRIS: And I think we were going to argue - because I don't disagree with your logic but I want to make sure ours is understood too. Ours is the incentive set up in the system should be to go first to the table, not to first show how powerful you are, and that's particularly true if third parties are affected. Now you could argue that perhaps in circumstances where the history has always been that this will end up in a stoush that it may be better to bring on the stoush first. I've heard that argued.

35

But that ignores the interests of the third party who might suffer in these circumstances. So our logic was that the incentives in the system should be aligned primarily towards getting to the table, rather than showing how powerful you are, and your logic is also quite reasonable. Where you have assumed that bargaining has started, even if people haven't got to the table, and I guess that's the area where we're going to be potentially at cross-purposes.

40

It's in a very uncertain world and we think on balance the incentive

should be in favour of first getting to the table. Now if a party - under the current system if a party simply refuses, the workforce having determined that they want to start negotiations, you can get the Fair Work Commission to establish there shall be a negotiation. You have the legal ability over the current system to say there shall be a negotiation started, and at that point if there's equally refusal well that's - your case is pretty clear at that stage.

But we're not trying to set up a system for the extreme example here. We're trying to set up a system that's primarily devoted towards the norm. So I'm not contradicting what you say. It would very much depend on the specific set of circumstances taking place.

MR HUBBARD: I would have thought what - you know, genuinely trying to reach agreement, you know, and the phrase that's in the Act and having - getting a protected industrial action ballot, the interpretation of that is if a union and its members in that workplace have tried to engage the employer by letters, by serving their claims, by ringing up and saying, "When can we arrange a meeting?", as long as they can show that they have done that and they are genuinely trying to, you know, sit down and negotiate and as a last resort they have taken the step, maybe to shock the employer more than anything else, that people really want to do something by lodging a protected industrial action ballot application, I seriously don't see that that's a huge issue.

We certainly wouldn't shoot before we talked and I don't think many unions would in many circumstances, and if the Act is well defined in terms of what genuinely trying to reach agreement means, and that includes approaching the employer to sit down and talk first, that the Commission is satisfied that that has occurred then I don't see why they shouldn't refuse an order. Anyway, that's on that one.

The last bit is suspension or termination of industrial action. I heard the discussion before with VECCI around the high threshold around the economic limb, if you like. I don't have much comment on that. Our beef is - on the other side the health and safety limb and we come in the health industry, and I know our federal office submission had some material in it around this issue.

We often find that our action is suspended or terminated at a ridiculously low level, and so we welcome the call for information around whether or not that test is too low. And it's often done - Damien will comment on this - without regard to what normally happens. So someone could come into the Commission and say, "Somebody sat on a trolley in emergency for 12 hours" and a Commissioner - and I understand why no Commissioner probably cares too much whether BHP loses 10 million.

But they will care if they don't suspend an industrial action and

5 someone suffers a heart attack on a trolley. They will care about that. But there's no regard for what normally happens in this hospital emergency department or what normally happens in - this hospital may shut down its operating theatre over December and January in normal course because the surgeons go on holidays or whatever. So there's no regard to the normal stresses and strains.

10 I can say this: we've had intimate experience of this over the last, what, 10 years with our enterprise bargaining. We put every single thing we can in place to make sure people are not put in danger. We have committees, any emergency case would go straight through to the ward. Yes, we shut beds and yes we put bans on elective surgery. But any serious threat to life is dealt with immediately.

15 **MR HARRIS:** Yes.

MR HUBBARD: And we advise our members to err on the side of caution and yet within six, eight, 10 days we'll always face an application to terminate our industrial action.

20 **MR HARRIS:** But are they always successful?

MR HUBBARD: Yes, pretty much. The last time they weren't because it was suspended for three months not terminated. But it was effectively ended. They're always successful because no Commission member I think would risk that.

MR HARRIS: Yes.

30 **MR HUBBARD:** So I think there is an argument that the tests around this - and Damien can comment - need to be more robust. They need to take into account other factors other than what is the stated evidence. They need to ask people "Well, what's the normal practice in this emergency or in this hospital around surgery?" or whatever. So we'd say the history of the services and
35 inconvenience to the public needs to be taken into account. It's at the moment a very low threshold. Damien?

MR HURRELL: Yes, absolutely. Look, this is something that my
40 colleagues and I have discussed extensively, particularly during our most recent round of public sector EBA negotiations. ANMF in my experience has always designed their industrial action with great care and attention to the health and safety of those people we care for. Nurses spend a great deal of time with their patients and we care for them in a very real way and we do not want our industrial action to impinge in any significant way on those
45 people.

I think the fact that often the things that are most contentious in our

EBA negotiations are actually not necessarily terms and conditions that improve our take-home pay or improve our personal conditions, but actually are there to improve the care that we can provide to patients. It actually speaks very clearly to that. So the example in the public sector is that we have had to fight extremely hard over successive public sector negotiations to first gain and then maintain a guaranteed safe minimum ratio of nurses to patients.

I think that speaks very much as I say to our concern for the patients we have, and when you look at the industrial action that we have taken, as Leigh has said we have always - and my experience has been at the coalface, down there looking and discussing. We have always made sure that where there is a risk to health that is being incurred because of industrial action then the industrial action is effectively waived, and that if a patient needs a bed they will get a bed.

If a patient needs an operation they will get an operation. But as Leigh says, again being at the coalface I know how often patients every day wait in a hospital trolley, waiting for a ward bed.

MR HURRELL: Surgery is cancelled frequently for a wide variety of reasons, whether there's no appropriate bed for the patient to go into it or whatever it happens to be; and to - you know, it is a source of great frustration that we are bargaining for wages and conditions but also bargaining for items to improve the standard of care and that we are told that in doing so we are putting our patients at risk. That is galling. I guess - and the fact of the matter is that it actually reduces our ability to make those gains.

So whether there's a second suggestion I guess that my colleagues have made to me is that if we are to be restricted from taking industrial action entirely, as effectively occurs, then there should be some mechanism whereby we can access arbitration of all matters or a similar sort of system that actually will resolve these matters fairly in the interests of all parties.

I guess we would probably prefer to actually be able to negotiate directly but if we are to negotiate with both hands tied behind our backs then perhaps we need a mechanism that will permit us to achieve an acceptable outcome, both for the employees and employers but also for the people, the third parties that are impacted by the outcomes of these negotiations. And I understand that's actually something that the ILO has a great deal to say about as well.

MR HUBBARD: Because I think the ILO has - and I agree with Damien that the ILO says that if there are restrictions on essential services workers bargaining and taking industrial action, that there ought to be proper arbitration mechanisms in place to compensate for that loss. Now I think

that's probably a weakness and this is not something I think - and correct me if I'm wrong, but the Commission commented on particularly in its report in several ways.

5 One is that the limitations on the Fair Work Commission to be able to grab matters before they become real problems, and as they used to in the old days have, you know, dispute - nowadays most disputes go to them as a result of breaches of enterprise agreements or NES. So matters arising from an agreement, not from disputes early on in a bargaining process.

10 The second thing is the arbitrations that occur as a result of termination or suspension of industrial action are clearly said to be not to put the parties in any better position than they were while they were there during the bargaining. In other words, it's not there to look at the merits or the fairness of the outcome but simply to come up with a result that, you know - - -

MR HARRIS: Action should cease on - - -

20 **MR HUBBARD:** - - - doesn't encourage people to go to arbitration, and I suppose what we'd be saying is if there are limitations on people like health and other unions, workers, in terms of taking industrial action then there needs to be a much fairer form of arbitration put into the Act, a much fairer system that says, "Well at least if you're foregoing the right to take industrial action there's some possibility that you'll get a fair outcome through the arbitration".

25 At the moment that's certainly missing, in our view, from the - I know after 21 days or 42 days the Commission has go to arbitrate after suspension or after termination. But it doesn't strike us that the grounds of that encourage good outcomes in terms of - - -

30 **MR HARRIS:** So just let me investigate a little the proposition that's in front of the Commission when a suspension of industrial action application is made. What does the Commission seek from the parties by way - is it merely evidence that there is an overwhelming threat to public safety of some kind, or is the Commission barred from asking the question, "Have you submitted or do you propose to submit a revised offer?" of the parties?

35 **MR HUBBARD:** You mean in the arbitration of the matter or the suspension of - - -

40 **MR HARRIS:** I mean it's not really arbitration. It's in suspension. In other words if I understand it correctly - because I'm asking you because you're a practitioner and I haven't been to a hearing - the logic of what you're suggesting is the quid pro quo should be, "If we are to be limited from exercising industrial action then there should be some greater involvement by the Commission in ensuring that there's a decision - - -

MR HUBBARD: A fairer outcome.

5 **MR HARRIS:** An outcome from all this, and I see the logic of your position but of course inherently we're trying - not just us but historically all the parties have been trying to create an industrial relations system in which the Commission is no longer, you know, the ultimate arbiter of everything.

10 **MR HUBBARD:** Sure.

MR HARRIS: And the great hander downer of award shifts and stuff like that, and so I think that's the driving force behind this. That only in very, very, very limited circumstances should the Commission become the arbitrator.

15 **MR HUBBARD:** That's right.

MR HARRIS: But you're saying maybe we should expand that very, very limited set of circumstances to another, and I'm trying to ask the question prior to that does the Commission, when it has an application in front of it, does it ask the parties or is it prevented from asking the parties, "And before I make this decision have you considered making a better offer, one to the other?" I mean, are they barred from doing that by law?

20 **MR HUBBARD:** They're not barred in the sense that certainly the last time in Victoria where we had very protracted industrial action, it went for six months and had a number of phases including both lawful and unlawful industrial action, the Commission ultimately - now Gooley DP was very involved in ultimately trying to help the parties reach agreement, involved in meeting after meeting at the Commission, and the Commission's involvement I think is really useful.

25 You can never underplay how useful a good Commissioner or good Deputy President can be in that process, and that's true. But what I'm really talking about is ultimately if that fails what's the type of arbitration or the possible outcome, and I think in terms of in the public sector and certainly essential services there needs to be much more - a greater confidence - and I accept what you say about the impetus that both the Work Choices legislation and even the Fair Work Act, it really is arbitration as a last resort and
30 "You're not going to get something out of this that's any better than" - "so don't rely on us to give you something good".

MR HARRIS: Yes.

35 **MR HUBBARD:** And I can accept that logic, but in the public sector where we can't kind of belt each other around on the ground, I think there needs to be something better for those people who are locked out of taking industrial

5 action than currently exists. Something with better criteria. Now we do have arbitration but the criteria around that are more about give them something that's less than where they were on the ground at the time that the action ceased, rather than what's a fair and reasonable outcome in the circumstances; and I think that's where we would rather see the system - and I think what you'd find there is of course we don't want anything to go to arbitration.

10 We would rather - because neither side knows what the outcome would be. But if it does go to arbitration at least people can have some confidence that the merits of the issues will be looked at in a much deeper way than they are currently. I think that's a weakness of the system. I mean this notion that somehow the Fair Work Commission is interfering in the process between employers and employees I think has gone - that's where we'd say the balance has gone too far the other way, even in the Fair Work Act. Certainly
15 in the - and it didn't really improve that much under the Fair Work Act from what it was under the Workplace Relations Act.

20 **MS SCOTT:** I can see the attraction that you're suggesting in relation to this arrangement where effectively it varies prohibition or restrictions on protected action; on the other hand you're seeking to get an outcome. But the reason why the pendulum swung towards less arbitration was to encourage negotiations and collective settlement of things. So what's to stop not necessarily yourself but a perverse person using the scheme, as you've
25 designed it in your mind, to force a situation towards arbitration every time or when it's convenient for them? What's the natural brakes on it?

30 **MR HUBBARD:** Well, ironically that was what the State Government of Victoria was trying to do last time when they sought the termination of our industrial action. There was a Cabinet leak. A Cabinet document said that was their strategy, to get us to arbitration because they knew the type of arbitration we'd get would be much less than we would have got on the ground. That was the Cabinet and that's why the Full Bench was very smart, they didn't terminate it. They thought, "We're not going to be the patsies of
35 the Victorian Government. We're going to actually just suspend it for three months".

MR HARRIS: Suspend it, yes. Can I ask - - -

40 **MR HUBBARD:** Yes, so I think - - -

45 **MR HARRIS:** I've got another variant on that same theme. So this is left field thinking not to be taken on the record as being a proposition or anything like that. But just for the purposes of this discussion, so in the Greenfields that we put forward you might have noted one of the three things we suggested might happen to resolve a Greenfields dispute is last chance arbitration. Which effectively means both sides put forward their last

proposition and the Commission does not shift between the parties, shuffle, negotiate, vary, it just picks one and the idea of that of course is an incentive, "Don't ever get yourself into that position."

5 So by all means you would really want to try and negotiate quite hard before you go to that, but if one side triggers that, it also says "Gee, we'd better come as close as we possibly can to a solution here because these crazy guys are going to have to pick one and it might not be ours, if we're the extreme and the other is more reasonable". So the idea of that was an
10 incentive again to bring the parties in, but an incentive that didn't trigger the thing I think that the industrial relations system in Australia is trying to avoid, which is the Commission becoming the be-all and end-all of everything.

MS SCOTT: Yes.

15

MR HUBBARD: Yes.

MR HARRIS: And the ultimate guider and explicit hand behind every award. So in the public sector context, because you mentioned that and I
20 know you deal in both public and private.

MR HUBBARD: Yes.

MR HARRIS: But just thinking about this in the public sector context, how
25 would such a proposition go in your mind if that became the default? In other words after a period in which, you know, a suspension of industrial relations or a cessation of strike action had been sought either party could trigger a last chance arbitration, the one which just says, "Put your two offers up and I'll pick one"?
30

MR HUBBARD: I think the Commission, especially Commissioners who have been around, and in most cases the people on the panel who would get that job of doing that would know the industry. They're not - I think both sides would expect the Commission to apply their mind to the merits. You
35 know, so having last resort - - -

MR HARRIS: But you seem to be saying your desire is that they actually do start getting into the nitty gritty and - - -

40 **MR HUBBARD:** And they would I think because they know - you know, you've got a panel of three or four Commissioners, Deputy Presidents. They are based in a city, they're based in the State. One or two of them, the ones you deal with, both the employers deal with - and they know the sorts of fights you're having, they know the sorts of things in the agreement or what
45 they've been asked to arbitrate. They have some sense of it usually. I mean, they're not strangers to what's occurring and so we would think that it's better, whether it's Greenfields or it's - and I don't know, the Greenfields - - -

MR HARRIS: No, I'm just using the Greenfields model.

MR HUBBARD: Yes.

5 **MR HARRIS:** Take Greenfields out of it.

MR HUBBARD: Yes.

10 **MR HARRIS:** I'm just stealing one of the three solutions, for the system to have incentives to force a negotiated outcome, rather than a disaster in Greenfields was that - now it's not that's - - -

15 **MR HUBBARD:** I mean, I can't - I suppose all I'm saying is that where - and this came up really in the context of is the threshold too low for the suspension or termination of industrial action. We think it is too low. If it was raised maybe that would solve the problem. But if it's - - -

20 **MR HARRIS:** I know that. I know that.

MR HUBBARD: But if it stays as it is - - -

25 **MR HARRIS:** As we moved on though I'm really trying to look at this question of arbitration.

MR HUBBARD: Yes, but as it is, where there needs to be arbitration we think it needs to be more based on the merits of the case and the actual issues at hand rather than last resort, as you have said, and this notion that you're virtually punishing people for coming to arbitration.

30 **MR HARRIS:** Or you're incentivising it.

MR HUBBARD: Yes.

35 **MR HARRIS:** To deal before you get there.

MR HUBBARD: Yes.

40 **MR HARRIS:** Which is the - and that should be the - - -

MR HUBBARD: Yes.

45 **MR HARRIS:** We think that should be the construct of the system. Every part of the regulatory system should be designed to encourage as far as it practically can the meeting at the table and some kind of exchange.

MR HUBBARD: But I think that goes back to the point too where you have

a - sorry, just your Cochlear situation where you have an intractable - some of our places we have intractable disputes. We have never taken industrial action. At the moment you've got to have, you know, effectively industrial action before you can get an arbitration.

5

There's not the kind of mechanisms where if we've got an aged care facility where we've got, you know, a quarter of the workforce, the employer won't talk or won't - you know, they have tried to take some industrial action but it's fallen apart, we can't get anywhere. We've got nowhere to go. We've tried to talk and under section 240 you can take a bargaining dispute but unless there's consent to an arbitration you can't - there's no arbitration possible.

10

MR HARRIS: Yes.

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MR HUBBARD: Unless it's, you know, a low paid bargaining arbitration or it's a dispute, an industrial action arbitration. So if you've got not protected industrial action on foot you can't get that arbitration. There's a real - so I suppose, look it's sort an all or nothing at the moment. There's no middle ground for helping the parties to solve an intractable dispute. Now it may well be that the person where the industrial action has failed doesn't want an agreement and says, "Go away. I don't want one".

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MR HARRIS: Yes.

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MR HUBBARD: But I'm not sure that's a fair outcome for those workers. Could I just - - -

MR HARRIS: How are we going with time?

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MR HUBBARD: Yes, sorry.

MS SCOTT: Yes, we are over.

35

MR HARRIS: I'm over. Sorry, keep going. Go on.

MR HUBBARD: Very quickly, in terms of penalty rates.

MR HARRIS: Yes.

40

MR HUBBARD: We wanted to just raise and given - and we note, and I say with some I suppose gratitude that the Commission doesn't recommend changing penalty rates around a range of industries. Nevertheless as a union we have got, you know, as I say, 70,000-odd members in Victoria. Many of those are people in their 40s, 50s and 60s who have children and other partners and children out there working in some of those industries that are mentioned, the HERCC industries.

45

5 We do take issue I think with the nature and the way that the distinction has been made between weekend work for those workers and weekend work for other workers, and I give the example in the talking notes about if you've got a nurse in a doctor's surgery, the doctor doesn't normally open on a Sunday - not too many GPs open their clinics on a Sunday but they start to open.

10 How that person is a nurse in the health industry, which you say is treated one way, is different from, say a hotel worker where for the last 50 years the hotels - or 30 years - hotels have been opening on Sundays; and I suppose what I'm getting at is I understand and we're not quibbling with the fact that - and I think you'd have to say the Fair Work Commission has actually done a reasonable job in reducing hundreds of awards down into 120 modern awards.

MS SCOTT: We say that.

20 **MR HUBBARD:** And there's not - yes, I know you say that, and there's a way to go in terms of consistency and all that sort of stuff. But we think that there ought to be universal principles that apply to everybody, not particular industries have a different logic applied to them, and that's especially in the case where we say that we don't see convincing evidence that changing penalty rates in that group of industries will necessarily result in a jump in employment or longer trading hours.

30 I mean, we see some stuff around Coles and around - there's different material mentioned in the paper but none of it's that convincing because you'd need to know a whole range of other factors about what's the saturation point of people wanting to go out having meals or drinks on a Sunday, or entertainment on a Sunday, and a whole range of other factors that I just don't think the work's been done.

35 I suppose what we would say is that yes, I think you're probably right to say there ought to be more rigour and more evidence and all that sort of stuff, but we think that ought to go to the Commission and the Commission, just as they did in the cafés case where they did make a decision two to one to reduce Sunday penalty rates, the Commission ought to be tasked with that job of continuing to look at cases as they come up.

40 Not have a whole set of industries and awards put under a different logic than the rest of us, and we say that because, you know, as I say - and places like Bendigo are very reliant on tourism and a range of other things and the money that people earn goes back into the economy.

45 **MR HARRIS:** Yes.

5 **MR HUBBARD:** I mean, I think you've got - as much as you can lowering penalty rates might encourage some employment, the loss of those penalty rates - and low income workers tend to spend more of their disposable income quickly and in the community they're in than putting it into shares or a mortgage or whatever.

10 I don't think the work has been done on the downside. I mean, I know the ACTU has done some work and some unions have done some work about what the regional impacts and economic impacts of lowering penalty rates or lowering the minimum wage are, but I just think more work needs to be done rather than making some blanket proposition for these industries.

15 **MR HURRELL:** Speaking as somebody who works - well, I've worked I think every weekend in the last month, I and my colleagues have a very clear understanding of the sacrifices that are involved in undertaking work outside of the traditional nine to five Monday to Friday model, and as such when I've been discussing my appearances before the Commission with my colleagues this week they effectively reject outright the proposition that somehow an industry like hospitality or retail, that people in that are less deserving of
20 compensation for sacrifices made.

25 From a regional perspective, and actually this is something that I had not thought of before my colleagues had spoken to me, many people who are undertaking this work are actually part of farming families. So there are many nurses who are married to farmers and part of farming families, and their ability to actually come into town, earn some money for the family actually supports that family when times are tough as, you know, when it doesn't rain, when prices are low, then that income supports the family.

30 A number of people have raised with me the concern that should penalty rates be reduced, because often the work is being done outside of the traditional model, that that in fact may well have significant effects beyond just the individual, but to the family and then to the viability of farming industries and farming families in this region, and so I'm very pleased to be
35 able to bring that thought to the Commission.

40 In our speaking notes, the attachment runs through a bit of an argument of, you know, where the nurses that I've spoken to have described their attitude to penalty rates. But ultimately I think it's a question of fairness. That where people make a sacrifice, and I don't think there's any question that working on a weekend is a sacrifice, that there should be a quid pro quo.

MR HARRIS: Yes.

45 **MR HURRELL:** There should be a response to that.

MR HARRIS: Could I just note though, because this argument is being

made quite a lot and not with a hundred per cent accuracy. The proposition is not no penalty rate.

MR HURRELL: Sure. No I - - -

5

MR HARRIS: It has not ever been no penalty rate. So the proposition is simply that Saturday and Sunday are now - and have been over a 30 or 40 year period - gradually becoming about the same. Now you can argue distinctions and there are clear distinctions, but in some things you could also say there's - and that the penalty rates themselves in this particular set of industries should probably be equivalised now. That's an argument. I agree with your proposition that says more work can and should be done.

10

We think more work can and should be done. That's the proposition behind this. But there are clear differences now today, and have been through the last 60 or 70 years, between the kinds of penalty rates that are paid on weekends between different professions and different streams of work with no great logic, because the original proposition was always, "We want to discourage work on Sundays" other than in professions like your own, other than people who the community expects to see available and on duty 24/seven and has for that whole 60 or 70 years.

15

20

Our proposition is that community attitudes are actually the driver behind this. It's not the sole driver but it's the one you can most obviously see, that in some workplaces the numbers are now out of line with the deterrent effect that was once sought by establishing a penalty rate at a particularly high level. But it's never been and shouldn't be no penalty rate for working in asocial hours, in hours where the rest of the community doesn't expect to work and people in particular jobs should.

25

30

I take your point about farming families. It's something I've been quite conscious of myself on previous work I've done in the State of Victoria amongst other things. These are quite important job opportunities. We talked previously about having casual work available to you for the fact that you can't do it on weekends for a particular group are quite important. So it was never no penalty rate. It was always that the numbers appear out of line with the community expectation.

35

In the end the Fair Work Commission can have a crack at this. It may be put to us subsequently that perhaps this should be determined by legislative proposition. That isn't the current position of the draft report. It is the Fair Work Commission should undertake this, as it should across a set of awards for other anachronistic propositions, other things that are out of line with from where they originally started. That said, I understand the intent behind your statement when I had a read of it. I understand the intent behind it.

40

45

MR HUBBARD: So I suppose what we're saying is that it's a complex issue and that, say, hotels even within that group that you've chosen, hotels are different to retail for example. We would say hotels have been open for the last 30 or 40 years. I mean on Saturdays and Sundays. I suppose we
5 don't quibble with the idea nurses get paid the same on a Saturday and a Sunday. We don't say there's not an argument for treating - but then why wouldn't you pay, as most modern awards don't pay shift allowances on weekends.

10 They only pay shift allowances for PM and night duty on week days. If you were going to change the shift - the weekend penalty rates why wouldn't you then pay shift allowances across all seven days for example? That's what happens to us. We get both the shift allowance and the weekend penalty even though the weekend is the same.

15 **MR HARRIS:** Yes.

MR HUBBARD: It's a complex set of things.

20 **MR HARRIS:** And this is what we had hoped to trigger with just this proposition.

MR HUBBARD: Yes.

25 **MR HARRIS:** That things are out of line, "Well fine" from both if you like - and again I know when I go "both" people say, "Oh, there's more than two parties sometimes involved here". But if we just simplify it and think from both employer and employee side putting the proposition that says, "There are anachronisms. I want this one fixed. I want this one to" - this would be a
30 way of reforming awards which isn't quite like, "Let's collapse them all into one and hope like hell in the course of that that we arrive at some greater simplification".

35 But I say this not in an attempt to suggest that I misunderstand your proposition. It's just that I guess I wanted to put on the record the proposition in our draft report is not no penalty rate but some - - -

MR HUBBARD: No, I understand that that's the case.

40 **MR HARRIS:** Some people have attempted to characterise it that way. We do believe in penalty rates for work outside what might be considered to be normal hours. We just noticed the anachronistic nature of some of them and say, "This is worth a review".

45 **MR HUBBARD:** Okay, and certainly I suppose we are concerned about where it is 75 per cent on a Sunday and people build their working life around that Saturday and Sunday, the loss of income. Because if that

combined with a lot of these people, the minimum rate in the award becomes the actual rate and that's how employers treat it unfortunately. They don't say, "Oh well, that's the minimum legal amount I can pay. Perhaps I should do better than that".

5

They seem to treat that as a - the combination of those things, especially if there was a slowing in the increase of the minimum wage, would mean the low paid in our community, and regional Australia has I suspect more of those proportionately than large metropolitan Sydneys and Melbournes, the impact would be quite critical for many people. So I suppose that's where we come from. Not that we disagree with consistency or logic, but the impacts of simply saying "Oh well, Sunday's the same as Saturday. Let's take away 25 per cent", I think that needs to be thought through carefully.

15

MR HARRIS: Well, we're hoping in the second round of submissions to have people come back and simply say, "In the course of this you might want to look at this too". That would actually be useful.

20

MR HUBBARD: Well, can I suggest to you that if you were - not that I agree with the proposition of 75 down to 50 on a Sunday and I don't, but what I am saying is - and I don't know why the Commission didn't - well, perhaps this wasn't raised with them, but the issue of shift penalties. If you're going to treat Saturday and Sunday the same then look at applying shift penalties.

25

Which is a way of compensating people not only for weekend work, but if you work outside daytime hours on a Saturday and Sunday, you're working evenings and night duty, that that disadvantage of working nights that you've addressed in your report and you say there's quite legitimate arguments about working night duty.

30

MR HARRIS: Persistent night work, that's right.

35

MR HUBBARD: Sorry?

MR HARRIS: Persistent night work.

MR HUBBARD: Persistent night work.

40

MS SCOTT: And we've also raised the issues associated with rotating shifts.

MR HUBBARD: Rotating shifts, yes.

45

MR HARRIS: Yes.

MR HUBBARD: But I suppose if you're working every Saturday night or Sunday night you may regard that as different to working on a Saturday during the day.

5 **MR HARRIS:** Yes.

MR HUBBARD: Or a Sunday during the day. You've still got your evening to go out when a lot of socialising - so the night shift, so applying the penalties that apply with shift work, the shift penalties, as well as the
10 weekend penalties would be one way of ameliorating the kind of proposition that you've put.

MR HARRIS: As I said we are hoping to get submissions which tell us effectively how to do more modernising and anachronism removal rather
15 than avoid the proposition entirely. Because I don't think it's sustainable. That's the other thing to consider here; if not now, then when would you resolve something that broadly speaking the numbers appear to be quite out of line with what you might call the logic of community expectation today. Now people can argue about what community expectation is.

20 **MR HUBBARD:** Yes.

MR HARRIS: I would expect that to occur. Sorry, I know I'm getting the time thing too, so.

25 **MS SCOTT:** Yes, I think - - -

MR HUBBARD: Yes.

30 **MR HARRIS:** Is there a final comment that - - -

MR HUBBARD: One - sorry, did you want to say something?

MR HURRELL: Just very briefly on community expectation. Just again
35 working from my own experience I know how hard it is to try to fill a shift on a Sunday right now. So if somebody calls in sick and can't work a Sunday and I'm in charge on Saturday afternoon, I know I'm going to have a devil of a time to fill that shift, even with the existing penalties as they are. If those penalties are reduced then the incentive to come in to work is reduced.

40 **MR HARRIS:** Of course.

MR HURRELL: So I would urge the Commission if you're thinking about, you know, looking at a logical structure and the community expectations, I
45 would suggest that my experience perhaps says that the community expectation is perhaps even more - is justified. Because that's on the ground what I've seen, that the nurses don't think that the penalties justify what

we're doing right now.

5 **MR HARRIS:** And that may well be the case and there is a history of over-award payments being made primarily for that purpose, or EBA negotiations for that purpose, and I think you've been involved in that yourself. So I mean we are - anyway I've probably gone far enough in ex tempore on this but I appreciate your time and effort in making submissions today.

10 **MR HUBBARD:** There's just one other slightly on the Commission itself, to say that the idea of - I must say we're wary of the notion of five year contracts. In somewhere as polarising as industrial relations you want stability around the system, and I know there will be allegations of, you know, the club, the industrial relations club, but the fact is people whether they're from an employer background, an academic background or, you know, government or union background, once they get in there it takes quite a while to build that expertise and build that rapport with the people you deal with on your panel.

20 We think that having decision making and your next contract based on how you've performed, especially the political nature of industrial relations, the fact that it's in the news all the time, I don't think it's like, say, the Productivity Commissioner where a part-time Commissioner is appointed for three years or five years, they have an expertise as an economist or a social researcher or something. It's a different kind of environment.

25 It's a much more political environment and we think that what you run the risk of is destabilising the institution with governments just willy nilly would say, "We're not renewing those contracts but we're going to just put in a new lot", and we just think that that's - there are Commissioners I don't like, there are people I think, you know, aren't that good but you work with the people that are appointed and from both sides, or the tripartite kind of context within which they're appointed.

35 So we are very wary of this notion of if the Commission needs new blood there might be a way of saying there might be somebody appointed to research roles or particular types of roles on a contract basis. But your run-of-the-mill Commissioner, I'm not sure that such a system would be all that - would work. Would it be that healthy for the institution? I'm not sure. I don't think so. I think there are probably certain roles, specialist roles you might bring people in for a period of time, but the Commissioners and Deputy Presidents ought to be there with that independence and that statutory independence that they have.

45 **MS SCOTT:** Thank you very much for appearing today.

MR HUBBARD: Thank you.

MR HARRIS: Thanks a lot.

MR HURRELL: Thanks for your time.

5 **MR HARRIS:** No problem at all. We're just trying to work out the logistics for timing. Are Ambulance Employees here?

SPEAKER: Yes, sir.

10 **MR HARRIS:** Beauty. We need about 20 minutes for lunch. Would that be all right with you guys?

SPEAKER: That's fine.

15 **MR HARRIS:** Yes?

MS SCOTT: All right, so 1.45. So we might adjourn - - -

20 **MR HARRIS:** About a quarter to? Start at about a quarter to?

MS SCOTT: Adjourn now till 1.45? Thank you very much.

25 **LUNCHEON ADJOURNMENT** **[1.24 PM]**

RESUMED **[1.46 PM]**

30 **MR HARRIS:** Brett, could you identify yourself for the purposes of the record, please?

35 **MR B ADIE:** I certainly can. My name is Brett Adie. I'm an ambulance paramedic in Bendigo.

MR HARRIS: I don't know whether you were here before, but Peter Harris, Productivity Commission.

40 **MS SCOTT:** Patricia Scott.

MR ADIE: Thank you for coming to Bendigo.

45 **MR HARRIS:** You've got a few opening - yes, thanks for that. Do you want to make some opening remarks or generally just talk about a topic, or?

MR ADIE: I'll pretty much speak to the couple of items that I mentioned. I think I'm in a possibly unique position in that we had probably one of the

most volatile enterprise bargaining negotiations in recent times. It concluded only a matter of, you know, nine, 10 months ago and only came to a head in the end as a result of coming up against a State election. So that was the only thing that got us over the line in the end. So I sort of probably - I will
5 concentrate on that to a degree and then I'd also just like to add a little bit. Well, pretty much you've heard or I suspect you've heard quite a bit in regards to penalty rates anyway.

MS SCOTT: Yes.
10

MR ADIE: But it's obviously something that affects us as well so I'd like to add a little bit there to if that's all right.

MR HARRIS: Sure.
15

MR ADIE: I sort of mentioned in my submission and I comment on the fact that right from the get-go with our negotiations it never felt like we were on a level playing field with the government, and as has been raised in your report, you've identified that there is issues in the public sector when it
20 comes to the bargaining.

We saw a government that was particularly hell bent, for want of a better word, at destroying our union. I think that was just, you know, they wanted to go down that path with ours, open the door for other unions. But it
25 really felt like they were out to try and destroy us, and look they went a long way to doing that. It caused some problems within our membership. It's caused a - we had a splinter group didn't come out of that but it brought them to the fore a little bit as well.

But the thing that I sorted of wanted to comment on was the big thing for us as paramedics that made it feel like it wasn't a level playing field was that it felt like there was an advantage for the government in delaying it as long as possible, and that was because we felt that for every day that they held off and delayed the negotiations, that was money that was being saved.
30

We felt it was quite obvious based on the data, you know, the figures that were coming out of other States and our comparison with nurses and the like, that we did deserve to be paid more than what we were being paid. We didn't think that was really the issue. What we thought was the issue was
35 that it just seemed that they wanted to delay and delay, and it just seemed like the slowest process ever.
40

I quickly had a look yesterday and just went over some figures, just to give an indication. We had had our last pay increase in August 2011 and that
45 was part of a previous enterprise bargaining agreement. We didn't get this whole thing sorted until January 2015. So all up between - we went for, you know, there's three and a half years there where we've gone without any pay

increases apart - the only pay increases that we got was to do with our rolled in rate. We have a rolled in rate that covers our penalties and all that sort of thing.

5 So it's based on what the actual penalties are. They then divide it across all the employees. On looking at the figures, during that time from August 2011 to January 2015 the average Australian weekly earnings had gone up by 10.17 per cent. Well, I'm sure like there's a number of different figures there that you could use but the gist of it is still going to be
10 the same. It ends up around that 10 per cent.

 CPI over that same period, although you don't get exactly the right dates, but I've been conservative, gone within those dates, was 7.4 per cent. Over that same period because of changes in shifts and that our wages grew
15 by 0.63 per cent. Now this put a lot of pressure on paramedics. We were already - you know, it's an issue that comes up in relation to working weekends and that type of thing. It's quite hard for our partners to have full-time jobs.

20 So a lot of us were feeling under the pump anyway and to see that we were being held back for as long as we were held back just increased that pressure on everybody and it really felt like, you know, when you saw David Davis and Denis Napthine up here and, you know, just seemed to be stalling us, it got quite bitter from our side, and I know from speaking - I've been on
25 the State Council for the Ambulance Employees Association for about four years now so I sort of became the person that everyone was coming to across Bendigo, pretty much from Mildura to Shepparton.

 The number of people I heard that were either leaving the job because
30 they just couldn't put up with this anymore. They were getting much better wages offered in similar industries or industries that didn't require as many qualifications as what we required as paramedics, didn't require weekend work, didn't require night shifts.

35 So we lost a lot to that but we also lost a lot just due to the stress, and I as I just said to you before, a lot of these staff that we lost were - they were your core paramedics because it was affecting those who, you know, you've got a mortgage, you've got three kids. So these are people who have been in the job 10, 15 years and it's all great we've got lots of students coming
40 through but our best paramedics are those at the 10 to 15, that sort of - I mean someone could argue with me about that. Probably five to 15 years.

 But they were the people that we - seemed to be getting the most disgruntled in that they still saw - once you get to 20 plus years your chances
45 of finding something else comparable are probably - there's not much. But we were losing those people who are going to be the future of ambulance, are going to stay - once you've got that far you would think they'd stay another

20 years, do their whole career.

5 We were losing some of those people. I know quite a few people in Bendigo who started second jobs because of the pressure that was - the strain that they were then put under. So it's really that not being a level playing field. We just felt like we were, you know, we had nowhere to go. We were at the whim of the government and when they decided they wanted to come and talk to us.

10 **MR HARRIS:** Yes.

15 **MR ADIE:** So that was quite a frustrating issue. We quite often raised about whether there could be anything in there that yes, we have these negotiations but whilst those negotiations are going on it's assumed that, whether it be at a CPI rate or an average weekly earnings rate, there's an assumed rate that you're going to get anyway. So it then takes that sort of - you know, the opportunity that they've got to minimise their expenses on wages, it takes that away from them. They've still got to achieve that.

20 So that was something that we quite often talked about. As to whether that is feasible that's for you know, greater minds than mine to ever work out. But it would certainly change the playing field in a big way. It really felt like one party started with the football and we had to fight and fight and fight to try and get it off them, and it was only because of a State election that we
25 actually got to that point.

Secondly, another thing that I mentioned was in regards to - and this is specific to having negotiations with a government - was the seemingly endless budget, that the government had to publish propaganda basically
30 against us in the media, and their ability to utilise the media. We saw full page ads ran in all the major papers, all the regional papers, with even conservative estimates came back with hundreds of thousands of dollars that were spent.

35 We couldn't of course match anything like that. We couldn't do anything like that. But what was actually put in there was a lot of false information and it was only there to paint us as the bad guys, to make us look like we were greedy and, you know, we were out for just our own gain. We weren't asking for anything more than - and what we've ended up now,
40 thankfully after a change in government, and we've actually got to a point where Fair Work is actually going to make a decision as to what is a fair wage for us.

45 That was all we were really asking for along the way, is have someone independent make that decision because we knew we were worth more than what we were getting paid. But the government put all these ads out, you know, it seemed for a while there in early 2014 it seemed to be every few

weeks that once again there's another one in the paper, and it did sway some public opinion but not to the effect that the government wanted it to.

5 So that's something unique to the public sector in that they do seem to have this access to the media like they do, and they also have the funding there to run these big ads. So that was quite a frustrating period for us. As to what might be able to - you know, what we could do about that I'm not really sure. I mean the government is going to run whatever ads they want to really, aren't they?

10

MR HARRIS: That's what you're going to get.

MR ADIE: Sorry?

15

MR HARRIS: That's what you're going to get.

20 **MR ADIE:** That's what you're going to get. I do understand that, but it was maybe that - you know, I understand them running political ads that are for political reasons. This shouldn't be a political game though. This is about people's lives, you know, and it was something more than that. It was more that we should have been fighting against someone who - you know, like you do against an employer being just that organisation not the whole government that are out for another - they're not out to provide the best services for Victoria. They're out to get themselves re-elected. Like it felt like you were
25 sort of - it wasn't level because of that reason, because they had other reasons that they wanted to try and shoot us down.

MS SCOTT: Brett, may I interrupt you and ask a question?

30

MR ADIE: Of course.

MS SCOTT: The matter is now before the FWC; is that right?

MR ADIE: Yes.

35

MS SCOTT: When are you expecting to get a decision? Have you got a sense of that?

40 **MR ADIE:** Initially we were hoping about November but it - look, realistically I would think it's going to push into early next year. The saving grace for us is that it will be back paid from 1 July. So really, I'm happy for it to take as long as it needs to take to get it right, because this is our big adjustment that we needed. This is what we have been waiting for all along, so.

45

MS SCOTT: Okay, thank you.

5 **MR ADIE:** Yes, and just there was that with the government was prepared to publish these ads which some of it they actually knew was false information, but it didn't seem to matter. It didn't matter that we were then able to shoot it down a day or two later because it was too late, the damage was already done. It was put out there and your case was harmed.

10 But then they also went to an individual level and I myself experienced this. I had David Davis in particular - we seemed to have a bit of a stoush over a period of time and he made a point of misquoting me from an article in the Bendigo Advertiser. So basically I'd said "Look, if it was only down to the pay we would probably accept this" but they were trying to take other things away from us for us to get - - -

15 **MS SCOTT:** Brett, can I just caution you. We do have a public transcript here and it will go up on a website. So because you're mentioning individuals and their actions, you just need to be conscious that it's going to go wider than this room.

20 **MR ADIE:** Okay, no worries.

MS SCOTT: You understand what I'm saying?

MR ADIE: Yes, that's fine.

25 **MS SCOTT:** Have I given you enough of a hint?

MR ADIE: Yes, I understand.

30 **MS SCOTT:** You could think about what you want to say next, but we've only got about four more minutes with you. Given the little hint I've given you, you might want to go onto penalty rates.

35 **MR ADIE:** All right. Yes, just an overall one on that. I find it quite distressing that politicians would individually attack paramedics; pick them out and individually attack them.

MR HARRIS: Yes.

40 **MR ADIE:** That was quite distressing and caused a lot of harm. I think I've probably touched on most of the other stuff in regard to the BE. In regard to penalty rates, I understand you heard some of the Nurses submissions, so I'll sort of pick up on a little bit of that. You commented on the fact that the community expectation - and we could argue all day about the community expectation. What I think is most important in the community expectation is
45 the expectation of those people who actually work these hours, because unless you've actually worked them, then you've missed those things with your kids and you've made those sacrifices.

5 You don't understand what it is to do that, to week in, week out, miss out on your kids - you know, the first time you kicked a goal or whatever, to week in, week out, miss out on that. You know, I've got three boys under the age of 14 and they all play soccer. I would love to have been able to coach one of their soccer teams. I couldn't do it because I couldn't commit to it, you know, but that's the sacrifice I've made, but then to take that to say - and our concerns as paramedics is that, yes, we start looking at those who work in the - whether it be the retail sector or, you know, the coffee shops, whatever, it's only a matter of time until - and it's a bit like what has happened with the GST now. It was a big thing when we took on the GST. Everyone was like, "How can we take on this GST?" Now we're actually looking at increasing it.

15 Once you open that door, it then becomes the norm, so then it's not that big a step to go, "Well, hang on. Why are paramedics getting paid, why are nurses getting paid, why are police?"

20 **MR HARRIS:** Can I just ask you a question about that. I think you heard the earlier exchange we had with the Nurses and Midwifery Union. It's not the abolition of penalty rates. It's Saturday equals Sunday and in some industries today, Saturday equal Sunday. In others, we have quite unusual differential rates. I note your comment which suggests that, you know, perhaps in the future someone will want to question it in relation to your industry even though we're not proposing it now, and everything is possible and anyone in a reasonable position considers the most adverse outcome first. I'm a natural born pessimist, I do it, too.

30 That said, I would say community expectations are likely to support the continued provision of services from emergency services workers far longer than anybody else, I would have thought.

MR ADIE: Yes.

35 **MR HARRIS:** It seems to be an improbable basis for saying that you could have exposure now. Of course that's one person's opinion, just mine, but it is therefore not the kind of basis that's immediately available to an employer just to challenge on the basis that it happened in some other industry and therefore it should happen in yours. Community expectations in our case, I think we're trying to put up data which suggests they have shifted, which as I agreed earlier with the Nursing Federation might need additional work and supplementation.

45 We would like to see the Fair Work Commission under our draft recommendations - we would like to see them have a go at doing that work. The idea that could immediately be transferred to another industry is at least somewhat limited by the fact that if you take, as your fundamental basis for

shifting, what does community expectation suggest in the case of the community, we are on record in this draft report in saying in the emergency services sector we can't see any shift and someone would really have to demonstrate a shift. To me that's at least some basis for comfort. It's not a perfect basis for comfort, but it's a basis for comfort nevertheless.

MR ADIE: Yes. I think our concern would be though that community expectations - once you then do start taking it away from one sector, then the community expectations over time will change in alignment with that. Part of my thing is that, you know - and this has been discussed by other people today - why should one sector of the workforce be treated differently for working Sundays? Their time is no less valuable with their children than mine is.

MR HARRIS: It's because the numbers are so different between them now. The rates are very different. You know, if we're using the report, there is a hundred per cent additional premium for a person working the counter on Sunday at a pharmacy versus - and you can just pick your other numbers, but 75 per cent in some cases working a counter, 50 per cent in other cases working a counter. The differentials are very large.

MR ADIE: Yes.

MR HARRIS: Which is why the proposition we put forward wasn't this number is wrong and that number is right; it's why not within particular industries equalise Saturday and Sunday. Some people have already mentioned and we'll do a bit more work on this, as a parity it already occurs in some industries that Saturday is the same as Sunday for some purposes. I think the Nursing Federation might have mentioned this and we'll probably do a bit of follow-up work on that.

It's not a question therefore of no penalty rates and it's not a question of saying this rate is right and that one is wrong. It's a question of saying why not treat the weekend rate as being a thing rather than the Saturday rate, the Sunday rate being such a large differential, because the numbers seem vastly disproportionate. On the other hand, if cases can be made why they are the way they are, that's why the Fair Work Commission would be in our draft proposition the final decision-maker.

MR ADIE: If we looking at saying, okay, well, Saturday is now equivalent with Sunday, would not a possibility be that we then average them out and we go somewhere in between with the Saturday and the Sunday? That then picks up the Saturday and - - -

MR HARRIS: That's a matter for people to put in front of the Fair Work Commission. I think another proposition raised was to say there are shift arrangements which might also be anachronistic; might be out of line and not

be out of line in the other direction. This is the proposition which says the Fair Work Commission should get in and manage these things on what we would call an issues basis. That's an issue.

5 If shift penalties are wrong, if weekend penalties are wrong, get in there and work out what the right arrangement should be. That is the ultimate proposition here rather than one which simply says abolish penalties. Even for a particular group it wasn't about abolishing penalties. It was the numbers look out of line with, if you like, the additional cost. Sunday, for a
10 person, is not tremendously different to Saturday, but, as we point out, night work is quite different and yet it's the well recompensed of all.

MR ADIE: Yes.

15 **MS SCOTT:** I wonder whether we could draw your presentation to a close. Thank you very much for providing the material and attending today.

MR HARRIS: Is there one last thing you need to say? I did chew into your time a bit, so - - -

20 **MR ADIE:** No, that's all right. I think we've probably touched on it and I did hear that you had already touched on it with a few of the others, anyway. Yes, I think we've probably pretty much touched on everything I wanted to talk about.

25 **MR HARRIS:** Okay. We appreciate you making the time today. I notice you did spend more time than just your short period - - -

MR ADIE: That's all right. No worries at all.

30 **MR HARRIS:** Thanks very much for making the time.

MR ADIE: Thanks for having us.

35 **MS SCOTT:** Thanks.

MR HARRIS: I think we go to the Bendigo Manufacturing Group. There are multiple tables available with multiple microphones, so feel free to fill up the space. We're asking people, when you're settled, just to identify yourself
40 for the purposes of the transcript, so we can track who said what.

MR HARDCASTLE: Gordon Hardcastle. I'm the General Manager of Motherson Elastomer, a manufacturing company in Bendigo, and Chairman of the Bendigo Manufacturing Group. To give you some background, the
45 Manufacturing Group - I represent 18 manufacturing companies, approximately 1600-plus employees. The Bendigo Manufacturing Group has

been in place since 2001. Just this morning we had our 122nd meeting of the group.

5 **MR HARRIS:** Thank you very much. Do you want to go around to everybody?

MR CHAPMAN: Welcome to Bendigo.

10 **MR HARRIS:** Thank you.

MR CHAPMAN: Paul Chapman, Executive Chairman of the Australian Turntable Co.

15 **MR HERMENS:** Herbert Hermens. Australia's productivity ranking indicates that we need to be cautious in our decision-making if that is not geared to assuring the results directly lead to making Australia a more attractive and viable place in which industry and commercial interest should survive. We live increasingly in an interconnected world and we can't ignore the fact that we are part now of a global world.

20 The agreements being made to further open up our economy ought to ensure that we set our efforts to global productivity improvements. At the least that means making sure that our processes, our management, our product and our labour must allow us to be competitors. ABS data supports
25 the notion that we must measure in a global supply basis. We cannot comfort ourselves in the protection of the past, that of distance and that of tariff barriers. We are in fact part of an international family and, as such, we must deal with competitor nations.

30 You'll be pleased to note that we're not going to be harping on penalty rates. Rather, what we're talking about is making sure that we focus on establishing an industry that can be competitive globally.

35 **MR DANNOCK:** Jim Dannock. I'm the regional manager for the Australian Industry Group, here in my role as a member of the Bendigo Manufacturing Group.

40 **MR HARRIS:** Thanks, Jim. Do we want to just do an issue by issue kind of consideration? Would that be easiest way of proceeding? I noted not penalty rates today.

MR HERMENS: No.

45 **MR HARRIS:** We've had a bit on penalty rates. If you'd like to do the five-second version on penalty rates - - -

MR HERMENS: I think you can harp on one issue to such an extent that you lose the value of the discussion and clearly there has been so much discussion about penalty rates that we're actually not focusing on what is necessary. That is to improve Australia's productivity and that is not just by
5 cutting people's wages. It's by improving their productivity. That should be our focus. Sensible discussion about penalty rates ought to be part of that package, there's no doubt about that, but it shouldn't be the focus.

The focus really for Australia must be on our productivity relative to the
10 rest of the world. We are the first generation that is actually bequeathing a lower living standard to our future generations in history. That's a really heavy burden for us to carry and so to focus on just one element ignores that there are lots of things we need to look at. We need to look at process improvement, the stem subjects, infrastructure building, improving the
15 capacity of our workforce, improving the production process, making sure that agreements being made internationally allow Australia to be competitive.

MR HARRIS: I think those are points others have made. Probably not as eloquently as you in the course of this inquiry, but in other inquiries that
20 we've been conducting ourselves.

MR HARDCASTLE: We do have a paper to address some of the points, if you would like a copy.

25 **MS SCOTT:** Yes, all right.

MR HARDCASTLE: I think firstly on the question of work experience placements and internships, from a BMG perspective we support the current position that there is. I think one of our concerns is to ensure that the
30 management of those placements by the education system is where we maybe have some concerns.

MR HERMENS: One of the elements that you see in many other parts of the world is the integration of education with industry. I think that in
35 Australia we have attempted to do that and we do it reasonably well in medical spheres, and a number of other limited areas. I think we need to broaden that up and we need to make sure that industry and the education providers are linked. I think the failing within the system that exists today is that we don't treat these opportunities such as work placement and
40 internships properly.

I think they should be treated on the same level as apprenticeships where they are properly controlled, where the outcomes are well stated, well understood, but the responsibility should come back to the education provider
45 to ensure that there is an outcome for the participant.

MR HARRIS: Is the development of a curriculum that matches a workplace - in perhaps not this inquiry, but in other inquiries it has come up that the system seems to work for some industries and not so well for other industries in terms of integrating their curriculum with the workplace's need.

5

MR HERMENS: You know, I think having looked at this and having had the chance of the experience elsewhere in other jurisdictions, the reality simply is that we're not taking this seriously. You know, for us to take the children and the workforce of the future, we need to bring them into business at the earliest stage possible to ensure that they understand what they're wanting to do and to then foster them into that for their future. I think that some are not prepared to take that responsibility.

10

There are clear examples. You know, in Europe there are many examples of many jurisdictions that have got systems in place so that the tertiary providers - the education providers, rather, interact with industry and ensure that the value is there for the student. I can indicate a number of countries that have got very good systems in place, such as Holland, such as Germany, Denmark, Sweden, that have got systems in place that work interactively. I think it's not as hard as they would like to imagine. At the moment of course they're under enormous cost constraints, so they're not looking to build on any cost, but the value of course element seems to be escaping lots of people.

15

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MR DANNOCK: Just on this particular issue of internships, in Bendigo we've got some difficulties around our engineering training or education, particularly at a higher education level. We've been working with some institutions to try and alleviate that. One of those connections will be with industry engagement in that particular area and it will be the need to have some, I suppose, clear ways as well as a bit of flexibility to be able to have that industry engagement to make sure that we can encourage that education to happen at a local level.

25

30

On a regional level, we certainly find it a bit more difficult on the education training area purely because of smaller demand, I suppose, that's seen in that. An industry link becomes a pretty important part to try and encourage partnerships with education providers to do that, as well as the pathway opportunities that are now coming through VET into higher education. Again we've seen them at an accreditation level. In a regional area, we're struggling a little bit to try and get the commercial aspects of that working, so again those sorts of partnerships are quite critical for us. Having that ability to have strong links with industry and higher education are going to be pretty important for regional areas.

35

40

MR HERMENS: Having mentioned the notion of pathways that are now starting to integrate themselves back into high school where now the option will exist in a short period of time, introducing students to university

45

education, I fail to see what is so difficult then to also interact with industry and to introduce opportunity for year 12 students to actually interact with business, as well.

5 **MR HARRIS:** Part of the suggestion in the past has been because individual institutions, individual high schools, now are somewhat independent in the Victorian education system rather than generically managed - so those linkages appear to be greater or lesser depending on the nature of the institution itself. Effectively, the principal and the senior staff view about whether we should move closer to industries - - -

15 **MR HERMENS:** There are times when you have to show leadership and maybe show some direction. As a business operator, I value my independence. We also have to work within some rules. I think that maybe there should be a rule to understand that there is a responsibility to give students that wish to go into tertiary education that opportunity and that experience, but also those that actually want to enter into some sort of non-academic future.

20 **MS SCOTT:** If I can just clarify, in our chapter we drew attention to some of the workplace relations issues that arise in this, but effectively your group is taking us in a different direction to talk about the need for actually an encouragement of this process. We had made a draft recommendation that the Australian government should look at apprenticeships and trainee arrangements. Do you have a comment on that recommendation considering that you've spoken about secondary schools?

30 A commentary around it in the report went to the issues that - you know, we've heard over a number of inquiries concerns from employers about the arrangements surrounding apprenticeships. Gordon, I think you mentioned your concern about some of the management of things. Did you notice that recommendation? Do you have a view on whether there should be a broad review of the current arrangements or are you particularly focused on the issue of internships relating to tertiary students?

35 **MR HARDCASTLE:** I think there are two questions there. The one on apprenticeships and traineeships, I think my experience of those are that there is management of those and there are clear outcomes for those, and they're managed through. I think that is the difference we see when dealing with internships from universities, that maybe that same management and clear outcomes are not there.

40 **MS SCOTT:** Thank you. That is clarification - - -

45 **MR HARRIS:** Should we move to the next topic in your paper? Would that be okay?

MR HARDCASTLE: Certainly, yes, flexibility in the workplace. I think we're certainly moving into a completely, possibly revolutionary time for manufacturing. I think now more than ever there is a requirement to have flexibility in the workplace to be able to contend with that changing environment and be able to make decisions very quickly. As we've mentioned, we're now working in a global environment where there are many challenges facing the Australian manufacturing sector. I think our ability to be able to breathe with the changing market is absolutely essential.

10 We said we're not going to harp on about penalty rates, but for me the flexibility is more than that. It's about how we look at shift patterns at different times; how we look at different periods when businesses are structured differently to be able to contend. Maybe even look at how we develop winter/summer arrangements, because in my business the temperature is a great effect to that. How we manage when we work with energy, so that we're flexible to not put too much burden on the network, but also we work at the most competitive times. You know, that's where I see a major part of flexibility in the workplace.

20 **MR HERMENS:** I think part of what we're talking about is having the ability to negotiate with individuals. I know that immediately people will raise issues with that, but I think we should be smart enough now to know that within some very strict rules we should be able to be flexible enough to work with people for their individual needs to have a degree of flexibility, whether they want to work from Monday to Friday or to work over the weekend or to work other shifts. In other words, we need to open up the discussion and allow for flexibility to occur that is relevant to the individual and to the companies that are involved.

30 **MS SCOTT:** Just on that point, are you saying that there is a sufficient flexibility under the individual flexibility arrangement?

35 **MR HERMENS:** No, because other people are making a judgment about being better off. The individual may well be better off because they may want to have Wednesdays off, for example, and they may want to exchange their Thursday for Saturday work or their Monday for Sunday work. We should be talking about looking at individuals. You know, the reality is that we need to make sure we have the capacity to negotiate, bearing in mind the needs of the individual businesses and the needs of the individuals that are involved in that business.

45 **MR HARRIS:** Moving from the individual to the firm level, we put forward a proposition called the enterprise contract in chapter 17 of the report. I was just having a quick run down here and you don't have a comment on that, and yet the sorts of flexibilities you're looking for are the sorts of things that potentially we had been attempting to address with such a concept. Do any of your group have a view on the enterprise contract?

5 **MR HERMENS:** Look, the detail I'm not across, but as a company that employs a number of people here in Bendigo, we have particular needs and particular issues. You know, we are directly affected by global competition and as a consequence we have been working very close with our staff. We've been very lucky that we've got a flexible organisation, a flexible group of people that have allowed us to make adjustments in the way we approach our business. I think that should be taken to the broader market.

10 **MR HARRIS:** Okay.

15 **MR CHAPMAN:** We represent manufacturing. By virtue of that, people have to make things. We're also in a global market where we have to be competitive and the key to being competitive is to be productive; to make sure that people are making things efficiently. It would also represent companies like my own - it's a bit small, but companies like Herbert's and Gordon's. I think it's important that flexibility is relevant to all those companies and what that means to each company.

20 In my company, like many other companies of this size, 20 to 30 people, you need production and you need to base that production on schedules and productivity; getting stuff out of the door on time. Flexibility for us is very straightforward. Actually we need a rigidity in this space; that you can have people working in certain hours and producing so many goods. Flexible in
25 the sense that both Gordon and Herbert referred to; we can change those hours and have those people work with us to change those hours, but to still get the product out the door. Manufacturing is all about production and productivity. Productivity is about making sure people can work and deliver the goods that you expected.

30 **MR HERMENS:** Whilst we said we wouldn't want to bang on about penalty rates, and we certainly don't, because I think that that takes away from the focus BMG is about and that is improving productivity, it is interesting though to note that in some jurisdictions - and New Zealand is
35 often mentioned where penalty rates have been shifted, yet in a number of industries penalty rates exist because it's an agreement between the individuals.

40 You know, anybody that says to me we're not mature enough in Australia to have those discussions - there's no doubt there are always some around the edges and they are around the edges only - but the reality is that we should be mature enough now to sort of negotiate those sorts of issues by enterprise at least.

45 **MR HARRIS:** National Employment Standards, you've down here supporting principle for the recommendation.

MR HARDCASTLE: Yes, for 4.1 and 4.2.

5 **MR HARRIS:** Yes. Then we've asked the question about casual workers and whether swaps would be worthwhile. I think this came up with a group this morning, as well. You don't support any change to casual worker arrangements. We put forward the information request because we couldn't necessarily frame anything terribly convincing ourselves, but we wanted to ask the question - to put it another way around, the question is do casual work arrangements work well for you, because we've got relatively few
10 submissions on casual workers.

MR HERMENS: It works very well for my company.

15 **MR HARDCASTLE:** I have to say it works well for me in the framework it is now, today.

MR HARRIS: Could I take that as a sort of positive in the inverse?

20 **MR HERMENS:** Yes, absolutely.

MR HARRIS: Casual worker arrangements are actually quite important and worth maintaining in the current structure as they are today.

25 **MR HARDCASTLE:** Absolutely.

MR CHAPMAN: We can leave them be, I think.

30 **MR HARRIS:** Junior pay rates. This came up as much as anything in the context of youth unemployment, but also in the context of the question of whether junior pay rates were soundly established, if I could use such terminology from the bureaucracy - as in Sir Humphrey and unsound and sound - because they relate to age and yet people's competence is not always related to their age.

35 There are examples internationally of less than adult pay rates where it's a competency based pay system or perhaps a hybrid; some age, some competency, but variations according to competency more than age. Do you have a view on that sort of issue? Does it apply much in your business?

40 **MR HERMENS:** The view is simple. We don't have room to have people working for us for nothing. They should be paid the value that they contribute to the efforts that they put into it, given that there is some minimum standard that we should adhere to. That's an absolute, but the principle we should adopt is that it is the contribution made to the company
45 that should be compensated. The company also has a notional cost of hiring below expected or required standards, because they need to bring those people up to standard and that has a direct cost to the organisation.

5 **MR HARRIS:** Then there's long service leave which we've learned today is the subject of a Parliamentary inquiry here in Victoria. I wondered why portability of long service leave had leapt up the list of - but I guess that's part of the reason why it is, it's under consideration here in Victoria. Is that the primary factor, that it's the public topic of the day or are there specific issues in relation to portability that you would like to bring out? I see here you don't support portability, but are there particular reasons why you don't support portability?

10 **MR HERMENS:** Because when we address - my age, unfortunately, exposed me to the discussions when it went through the construction industry and, whilst I could probably understand in broad terms some of the reasons for that, the reason for long-term service leave is very clear. It's almost a loyalty payment for working with a company, so it's an over and above payment. So it takes away the original reason for that.

20 We started paying that from day one into the future. It is just - in my opening statement I made the point that we have to understand that we can't just continue to escalate costs in Australia. That doesn't really add value for either party, whether it's labour or capital and we need to be very careful of allowing our emotions to run away with this. The reality is think back when it was introduced what it was about. It was about saying to somebody, if you worked in a company for - I think originally it was 15 years, that you deserve some respite from that company. Some companies you need that. Some others you don't, but the reality is that it was actually tied to the particular company. Now, in the construction industry there is an argument I can understand, but I don't think that that belongs in general industry.

30 **MR HARRIS:** Then there's unfair dismissals and you've got you believe here that more should be done to defend employers from what are frivolous and vexatious complaints. So our proposition had been to effectively alter the paradigm in which the Fair Work Commission currently operates to enable them to give preference to substance over form. In other words, the process is less important to discovering whether compensation is payable than the substantive reason for dismissal. In other words, if it's a correct decision to make a dismissal, the process should be secondary to that.

40 **MR HERMENS:** But it still allows someone to propose a vexatious claim and we are very concerned about it. We're setting laws for the minority and not for the majority. Whilst we need to keep that minority under control, the majority of businesses, the majority of labour are very, very upfront and honest organisations and individuals, but the reality is that we get hit by vexatious claims and the cost to the company, not just in dollars and cents but in reputations, is enormous. You know the old saying, "Throw enough mud, some of it sticks."

5 I think we really need to understand that whilst we don't want to discourage people's opportunity to find redress where it's deserved, I think it needs to be taken a little bit more seriously than what it is and maybe there should be a system where somebody raises that and that is kept in confidence until there is some sort of value put to that discussion to take it to the next step.

10 **MR HARRIS:** I think in our propositions as well we put down the Fair Work Commission should have the ability to dismiss the matter on the papers; that is, on the first submission, rather than necessarily occupy frivolous time with the investigation if on the papers it appears to be an unjustifiable claim.

15 **MR CHAPMAN:** It's spread a level of fear with employers that they now have to engage people in their organisation, even our sites, to make sure that you are protected from the claims that have no basis. That lifts costs that make you less competitive.

20 **MR HARRIS:** We heard from VECCI this morning that it was as much the time costs to an employer as it this the dollar cost.

MR CHAPMAN: Extraordinary.

25 **MR HERMENS:** Absolutely. From my company's perspective it has much to do with raising the issue and then having to confront that and, then make sure that everybody is aware of the issue, then is made aware of the fact that it had no substance and that can be expensive in time, money and emotions.

30 **MR HARRIS:** I think we are at the end of your list, but I want to give you the opportunity to say anything that we haven't covered off here before we close and move to the next person, if that's all right.

35 **MR HERMENS:** I think it is really important that start to see ourselves as a player, as a part of a global environment. That means that we need to make sure that at the end of the day what we to put is to have a productive and efficient economy, and that starts with not focusing on one specific area such penalty rates, but rather to have a look at the whole and that is in terms of the process, the management, the product, the labour, the innovation that we drive through the economy.

40
45 When we look at the infrastructure issues that we have in Australia, they need to be addressed and they need to be taken somewhat seriously, and it is extremely disappointing that we allow certain elements to take priority over the whole because we can chew gum and walk at the same time; we can do a number of things at the same time, but it seems that all we seem to talk about are small issues, which in themselves - if we fix just the penalty rates, it still doesn't fix the problems of my company to be a global player.

5 If we let the wharfs in Melbourne go without a competitive clause going forward, we should be concerned. If we continue to have the roads clogged, if we continue not to teach the standards at the levels that we do. So let's talk about the whole, not just each element of that, so that we can move the country forward.

10 **MR CHAPMAN:** Can I reiterate: we are representing the Bendigo Manufacturing Group, and it's manufacturing and making things, and that will always happen. Our focus, particularly in the last few years here, is to build these very strong relationships with universities to improve and encourage the research and development, and thereby the innovation that will keep us competitive globally. It's a critical element of this group that we build that and that focus is unwavering.

15 One of the notable recent articles we've read was that 90 per cent of South Korea's exports last year had their genesis in university research and Australia's, I think, was five. For that reason, this manufacturing group in this part of Australia sees the importance of building that bridge and closing that gap between industry and academia and bringing them closer together so at the end of the day our innovative minds can make us more competitive, in which case we will become more productive as well.

20 I think I'm right here, that it is still one of the pillars of the industries that creates jobs and people want jobs.

MR HARRIS: I think you're right. Thank you very much for your time today.

30 **MR HERMENS:** Thank you.

MR HARRIS: I think we have Josh Pell. All right, let's go, Josh. We'll try and keep to time.

35 **MR PELL:** Sure.

MR HARRIS: Can you identify yourself for the record, please.

40 **MR PELL:** Yes, certainly. So my name is Josh Pell, I'm here today representing the Young Professionals Network in Bendigo. So we're a subcommittee of the Bendigo Business Council but we represent the 18 to 40-year-old mainly white collar employee in Bendigo and provide them opportunities to network and develop and basically retain locals in the community as much as we can, given that age group tends to drive off to capital city quite often to pursue career opportunity.

MS SCOTT: The reason why you probably can't hear amplification is because this is for the transcript, so it's - - -

MR PELL: Cool. I'll speak up, sorry.

MS SCOTT: So speak clearly - - -

MR HARRIS: Feel free to - we can hear you, so if you are interested in the other audience members, talk to them as well.

MR PELL: That's fine.

MS SCOTT: Can you just tell us how many people belong to your group or network?

MR PELL: Sure. So we've got approximately 1000 members of the Young Professionals Network in Bendigo. So that's via social media and also full membership subscription.

MS SCOTT: Thank you.

MR HARRIS: Are you going to do an opening statement kind of thing for us?

MR PELL: Yes, I thought I would just - yes, just a bit of a speech if I can, just before I elaborate on a few points.

MR HARRIS: Sure.

MR PELL: So I've covered off what YPN is. Just a little about myself as well. Born, raised, bred in Bendigo. Two kids, three and 13, so I deal with teen rebellion and toddler-ism at the same time. As well as YPN, I'm a director of the Bendigo Business Council and a director of the Victorian Basketball League, so throughout my professional career and also volunteer career, I've been involved in many different industry segments and also various committees and things like that. So I guess that gives me a really good understanding of the various segments that are in place.

Today I am here, though, representing, I guess, the 18 to 40 demographic, which is mainly the employee in this conversation. I think today we've been - well, you guys have definitely been blessed with the likes of the Manufacturing Group and Co that are speaking from the business point of view. I think somewhat and sometimes missing is the employee point of view. So that's what I hope to cover off today.

I guess in reading the report itself there's a lot of content and those that do know me know that I would love to talk about all of it, but for time's sake

I won't. I'd like to discuss some key points, but probably just more the underlying theme of increasing productivity between employer and employee. So I guess the big one in the room is penalty and overtime. Myself and the Young Professionals Network would like to commend the
5 Productivity Commission's work in this area. It's been very thorough in reading of the report; it goes into great detail.

I guess from a YPN standpoint it does highlight again that hospitality workers are overrepresented in a lot of areas regarding irregular shift,
10 nightshifts and various sorts there. I guess the most alarming fact was that many participants reported doing unpaid overtime for at least that six to 12-hour mark which seems to be, as noted, implicit as part of their employment, which is concerning to the Young Professionals Network given that, when you sign your employment agreement or contract, it stipulates
15 your hours. It does not say that you will be doing 20 per cent overtime as well, unpaid.

This is where YPN believe that there needs to be a greater dialogue between employer and employee and the Productivity Commission and Fair
20 Work needs to set up some mechanisms to handle that open dialogue more so. Rather than being an over-regulator and getting down to the granular detail that is involved in each of these sub-points, perhaps providing more of a brokerage sort of service to allow employer and employee to have an open and possibly, in some circumstances, informal conversation around their
25 conditions of employment.

We feel that this would then be able to boost productivity, because the employee is invested and is motivated and wants to be a part of what they're doing. From the employer, they've got a productive staff member. So in
30 terms of manufacturing, that's more widgets that could be being produced; in terms of hospitality, that is greater customer service, because if they are happy at work they are going to show it through there and I am likely going to buy more drinks at the bar.

We also believe, by setting up that system and having that dialogue, it could take the heat out of the circumstance. Sometimes it is difficult for an employee to go to their employer and say, "I'm not happy with my package," or, "I've performed very well over the last two years and I am seeking a
35 better remuneration." Sometimes that's an awkward conversation. If there was some process in place to help facilitate that, rather than be, I guess, a referee when the fight is out of control, YPN sees good value in that space.
40

As mentioned around the unpaid overtime, YPN strongly believes that the 38-hour work week should be kept. That should just be a minimum
45 protection. We shouldn't really be discussing that. YPN feels that if we have that more open dialogue outside of that minimum protection, that's where the

employee could agree to do more standard hours outside of the minimum protection, rather than modifying the minimum protection.

5 In regard to the enterprise contracts, YPN again would like to commend the Commission's work around this. I, for one, personally have never - I've always actually negotiated my employment agreement, so to have a contract that steps up the flexibility further is great, personally. From a YPN standpoint, we are also very amenable to it. However, going back again to that process around having a broker of sorts in the middle, we feel that
10 enterprise contract would work really well with that brokerage, as we feel that sometimes those types of agreements - and getting back to the infamous WorkChoices - could be somewhat pushed on to an employee to sign.

15 By having a process in place where everyone has actively agreed to be part of an enterprise contract framework and it's facilitated, YPN feels that that would be a good win.

MR HARRIS: YPN, are you familiar with the work of the Fair Work Ombudsman at all or have you encountered this - - -

20 **MR PELL:** I don't do - I haven't personally done with that and, with the members that I've spoken to, not a lot of people have had a lot of dealings with the Ombudsman.

25 **MR HARRIS:** The Ombudsman has an information development program and a sort of - it wouldn't be quite the brokerage role in the way you've described it, but there is a sort of a facilitation of understanding kind of activity and I think the Fair Work Commission does some similar things too, but I guess they carve out different remits between themselves. Given the
30 thematic that you've got in here, which is a form of performance-management exchange, almost, between employer and employee, not quite a central part of the Fair Work Act kind of arrangements, but I understand the concept you're trying to advance. I just thought you might have seen something in either the work of the Ombudsman or the Commission. But
35 we'll go look for it ourselves, so that's fine.

MR PELL: Yes. Coming from that, my understanding is that the Ombudsman, in the other industries I've dealt with, again are the escalation point. Where we've come from from YPN is we don't an escalation point,
40 we want it facilitated at that round.

MR HARRIS: Yes, okay. I understand.

45 **MR PELL:** So, rather than it getting hot, it never gets hot in the first place because everyone understands that we are going to commence an enterprise contract. The employee puts forward what they think and the employer puts what they think and we start to work on a mutually agreeable framework.

Again, with the enterprise contract, YPN would like to point out that we think, yes, it's a great way of rewarding high performance outside of the existing EBAs that are in place. Sometimes, with an EBA that's in place and it's rightfully in place in regards to minimum protections and conditions of employee, sometimes those EBAs can reward those that are, I guess, coasting along who are not necessarily bad employees but they're not striving for further opportunity. So again, we'd like to highlight that work around that enterprise contract and go from there.

Basically, we would like to just put forward conceptually the idea of Fair Work and the Productivity Commission trying to open dialogue further between employee and employer. That's our main message is that, whilst we can sit here and every 12 months or two years, three years examine the conditions, examine regulation and make changes and things like that, there are very few people that understand it in small to medium business back to front. So that is from the employer level. From the employee level, that could also be even more difficult, so rather than over-regulating the negotiation, we should be looking to put minimum protection in place and allowing a more facilitated negotiation.

MS SCOTT: Josh, thanks for that presentation. Can I just go back to your comment along the way that within your network it is not uncommon for people be working six to 12 hours extra, effectively unpaid. This issue of unpaid work came into our inquiry in a number of ways, including internships. Now, you probably heard the Bendigo Manufacturing Group speak just before you. Given that you're a young professional network, have any of your members raised the issue of unpaid internship where there doesn't seem to be career advancement opportunities or there doesn't seem to be training opportunities? We have heard, but it's very hard to get evidence of this, of instances where people are offered what appears to be a training opportunity, but in fact it's a work opportunity without pay. So have you had any exposure to this issue? Is it an issue that is prevalent in any particular sector that you are aware of or it hasn't touched Bendigo and you don't have an issue with it?

MR PELL: It probably doesn't hit Bendigo as hard in our demographic, so the 18 to 40 white collar, but certainly I have peers and colleagues in Melbourne, particularly in the legal profession, that have to undertake the three, six, 12-month internship where some of that is either very, very poorly paid or not paid at all, which is a concern.

From Bendigo's perspective, ours is probably more around the traineeship scheme and sometimes, the employee can be sometimes taken advantage of, particular certificates being like the Certificate II in retail operations or something along those lines that are a very, sometimes, manila-folder certificate that the employee might not know they're

undertaking and also might not know that that might stifle their ability to undertake a traineeship in their preferred career at a later point.

5 Without calling individual businesses out, but more that retail sector that tend to put their staff on a full-time traineeship and the trainee at that time is probably 16 or 17 years of age and doesn't quite understand the flow-on effects of undertaking a traineeship so early, in that they can't undertake their Cert IV in business management at a later date.

10 **MS SCOTT:** Get one bite of the cherry.

MR PELL: Yes.

15 **MR HARRIS:** No, I see that. Sorry, did I give you a chance to finish?

MR PELL: No, you're fine.

20 **MR HARRIS:** I didn't have any other things to ask. We really appreciate you making the effort in coming along today.

MR PELL: No worries.

25 **MR HARRIS:** There things are pretty important for us to hear. As you say, you can represent more of what I might call an employee perspective, the kind of thing that we wouldn't normally at the formal hearings, particularly in Melbourne where we will be, you know, in the big time, I think. So anyway, we really appreciate your effort to come along today.

30 **MR PELL:** No worries. Thank you for the opportunity as well.

MS SCOTT: And canvassing your membership. Very useful.

MR PELL: No worries. Thank you.

35 **MR HARRIS:** So I think we have the National Union of Workers next. You've got both tables. You can spread out you know.

MS PORTER: We're friends.

40 **MR HARRIS:** We are feeling like we have over provided, although the Bendigo manufacturers managed to fill up both tables for us, so it was good of them. For the purpose of the record, could you identify yourselves, please?

45 **MS PORTER:** Yes, my name is Jan Porter. I'm from the Bendigo Neighbourhood Hub. I'm a member of the Bendigo Ethical Employment Group and I'm here under the auspices of the National Union of Workers

because we have had a lot to do with them in assisting migrant workers and their issues at work.

5 **MR MARTIN:** My name is Luke Martin, I'm a delegate for one of Bendigo's largest private employer, that's Hazeldene's, the chicken farm out in Lockwood. I'm also a member of the Bendigo Ethical Employment Group. I have a seat on the Bendigo Trades Hall Council and I'm an active member of the ALP also.

10 **MS PORTER:** I should have added, I've been both an employee and an employer in my longish life, so I see it from both sides.

15 **MR HARRIS:** That's good. That will definitely help you to jump from table to table if you really want to, or not. You probably don't have to do that. Okay, so opening statement-wise, I think you guys did send us a little bit of background. Are there things that you want to read onto the record or should we move to particular issues? I see migrant workers is also quite a topical matter as well. We could start there or you could go with the statement.

20 **MS PORTER:** Perhaps I should start. My particular focus in being here is to talk about the Karen people in Bendigo who are recent arrivals. In my role with the Bendigo Neighbourhood House we are advocates, we mediate and we are intermediaries on behalf of this community, particularly for the
25 purposes of this Commission in relation to employment. It has been a very difficult process for these people getting started in new country.

30 **MS SCOTT:** Just to clarify, Jan, these Karen people that you are helping, what visa status - are they on permanent visas?

MS PORTER: They are brought here on humanitarian visas and they have permanent residency and they come here as part of our obligation to the United Nations.

35 **MS SCOTT:** Thank you.

MS PORTER: So they come here with expectations of having a whole new life in a wonderful new place.

40 **MS SCOTT:** There are no restrictions on them working?

MS PORTER: None, and there are no restrictions on them staying here forever. I might say, we have had so many do citizenship now that we have had to put on extra ceremonies, so it's been very good. That is one of the
45 things that we do at the Neighbourhood House. We run courses for them to get citizenship, so I am very proud of it.

Our main goal is to assist them with settlement, to make them feel safe, secure and to give them the same opportunities as anyone else expects as a full participating member of our society. Not easy to do, if you come from a refugee background. The issues for migrant workers - they are right here from refugee camps. These people want to work, they want to get on. They have strong motivation and strong work ethic and I noticed that the man from Keech Castings was here and he would have testified to this because they have employed quite a few Karen on the basis that they are good workers and want to work.

Sometimes, however, their experience when they first get here is - causes great disillusionment and undermines their hope of success. They are so easily exploited. They have no skills, no experience, no understanding of how the system works. They don't know about things like being a sole trader and getting an ABN number, which they are often asked to do. They don't understand the need for things like payslips, superannuation, tax. They have no knowledge of workplace health and safety standards. They don't know about pay rates, proper hours, access to unions or assistance. There's a power imbalance that's massive.

They have a great desire to work, they want to have a better lifestyle. They have limited or no English. They have no understanding of mutual obligation, except that they need to work hard and that's what they're accustomed to doing. They are under a lot of pressure to find work then they get here, because they sign up with Centrelink and a job network, and they are basically pushed to try and find a job. That in itself is very difficult. So that makes them subject to easy exploitation.

The job networks don't vet the employers to see if they're doing the right thing. They're just happy to get them off their books, as far as I can see, and Centrelink don't have any knowledge of the people that they are going to work for. The pressure is often subtle, too. As they move through the community, one of first things people ask them is, "Have you got a job? Are you looking for a job? Have you got a job yet?" You go to the doctor and the doctor will say to me, "Has he got a job yet?" So without - and they feel that pressure and that's important to them.

They have no informed employment choices, so they don't know what's out there, what the options are and what they might do, what they might not do and what the training might be, how they might, you know, make decisions based on what they can do and some of them do have some skills, but they are not formal skills. They end up often working for contractors rather than a main employer and they usually start off their employment history in Australia as casual employees and that's particularly what I want to focus on.

Casual work is very limiting for people who have aspirations, especially people who come here with nothing except what they carry in a plastic bag. There is almost no employment available for women in the casual workforce here, except cleaners and then they have to be trained and have certificates and things to be cleaners. Some get work in aged care facilities, the women. I know one young woman who was a casual employee at an aged care facility and didn't know that she was entitled to ask for permanent employment on regular shifts, so they have no idea that what is happening to them isn't okay. She has to supplement her employment with other casual income.

Another man worked as a landscape gardener. I saw him one day trimming a very high hedge, higher than that fence, standing on a plank of wood, balancing on two ladders and no safety gear, no helmet, no anything. He later told me that he was exhausted because he worked very long hours, very hard, very little pay and he wanted to leave, and he didn't know how to do that. He didn't know how to actually get out from under the oppression that I thought he was under.

Casual work is both insecure and low paid. People think you get better pay rates, but when you're working for an unethical subcontractor, they pay you what they like and you don't know whether what you're getting paid is the correct rate; and often most of the time it isn't. There are no holidays, there is no sick pay. The Karen families are very close families. They're extended families. They're afraid to ask for time off, for example, if a woman is having a baby and the husband might want to go to the birth or might want to be home and look after the other kids. They're terrified to ask for time off in case they get sacked. They find it difficult to attend religious and cultural festivals because very often they're expected to be at work.

In this community in Bendigo, when we became aware that this was happening to a whole lot of our Karen people and mainly through - the main offender was one particular subcontractor - then the community started to talk about it and people started to advise them to do other things. That's when I got in touch with the union and said something is not good here. One young man was injured at work and he went to the hospital, and when I went to the hospital to see how he was doing, he didn't know about WorkCover. They had had to do an emergency operation on his finger because it got caught in one of the conveyor belt things that the chooks are carried on. He had to provide his own knives, his own safety gear.

When we got to the rehabilitation phase, the physiotherapist took up the cause and we managed to get him some WorkCover. I then went to WorkSafe and said, "This is not okay. You have to do something about this man." I understand he was fined for significant under-insurance.

MR HARRIS: This is the employer?

MS PORTER: Yes, the subcontractor.

MR HARRIS: The subcontractor.

5 **MS PORTER:** Yes, but, you see, for the Karen, they can't do that. They don't know about WorkSafe. They don't know where to go, who to complain to. If there aren't, you know, people like me, it just would go on and on and on.

10 **MS SCOTT:** Jan, how easy is it for you to find the information? Obviously you're well connected to a variety of people in the community, but if you had to look up what someone's right pay would be, would you be able to do that or have you ever tried to do it yourself?

15 **MS PORTER:** Yes, I would probably be able to do that on the Internet or know who to call to find out. Yes, I'm able to research stuff and find information.

20 **MS SCOTT:** Right. What sort of underpayment of rates have you encountered and how long has it gone - I mean, you're familiar with all the recent media stories about other organisations. How egregious has it been here?

25 **MS PORTER:** With one particular contractor, it has been fairly bad. When the man gets work, the wives have to go to Centrelink and declare that he has work and they have to report every two weeks or week, and they have to produce a payslip. If they don't produce a payslip, their benefits are suspended or they get into problems with Centrelink. There is a lot of pressure on them to produce payslips, so I have women complaining. I said,
30 " Well, you have to get a payslip. You have to get a payslip."

 The husband got a payslip and it was on a piece of cardboard that looked like it had been torn off the back of a cigarette packet. It had some scribbled figures on it. It had all these major deductions. I actually have this at home
35 somewhere and I tried and tried to find it today. I put it away so carefully, I couldn't find it. He came home with something like \$180 out of 40 hours' work and his gross rate of pay - and you could identify tax, and then there were the other things that had been taken out that I have no idea what they were.

40 So when you say pay rate, it's hard to know because they often don't have any documentation that will tell you exactly what they're being paid. All they know is what they're getting in their hand; and cash usually.

45 **MR HARRIS:** What about the Fair Work Ombudsman?

5 **MS PORTER:** Fair Work Australia was one of my things - I was going to say the only referral point they've got is people telling them to go to Fair Work. There are a lot of impediments to that; accessibility, because these people don't speak English. They are the only ones that can make the complaint. They don't know or are not comfortable with using phones, because often when you ring somewhere like that it's if this, press 1; if this, press 2; if this, hang up.

10 **MR HARRIS:** Can I just interrupt you for a sec. Sorry.

MS PORTER: I haven't tried.

MR HARRIS: They are the only ones who can make the complaint?

15 **MS PORTER:** That's what I was told when we tried to represent on behalf of Karen, that if you went to Fair Work Australia, then the person who was making the complaint had to personally make the complaint.

20 **MR HARRIS:** I could understand that for the purposes of a statutory action, that a person would have to effectively provide evidence. I take your comment at face value, but we might pursue that.

MS PORTER: I actually did try. I did try and ring up. I rang the tax department, too, to try and say what is going on here.

25 **MR HARRIS:** We all know about tax.

MS PORTER: And I did - - -

30 **MR HARRIS:** Come on. We're here to do the achievable, not - - -

MS PORTER: Well, that's true, but you can't dob somebody in, so to speak. You can't ring the tax department and say, "These people aren't taking tax."

35 **MR HARRIS:** No, but the ombudsman - - -

MS PORTER: Well, I did try.

40 **MR HARRIS:** Anyway, I would be interested in - we'll investigate this.

MS PORTER: I did try and was told the only person who could make the complaint was the worker themselves. You will not get a complaint from these people for cultural reasons as much as anything else. They're afraid.

45 **MR HARRIS:** Yes. Again, I would accept that and I think I understand culturally why that would be. Also there are the few who are losing the job,

too, so these things - but this question of who can lodge a complaint and at least trigger some kind of review is worth consideration.

5 **MS PORTER:** Well, if there is an easier way to do it or someone can advocate for them, that would be a great improvement, because I would have happily gone and made as much fuss as I could.

10 **MR HARRIS:** There is also a working arrangement between the Immigration Department and the Fair Work Ombudsman which may not suit this circumstance. I wouldn't want to say that it does, but there is a working arrangement so that - it's suggested there would be some cultural awareness, if nothing else, with a particular set of circumstances should it be triggered and be worthy of an investigation and all that, which is why I come to this primary consideration of can a third party effectively draw attention to a problem. Anyway, we'll look at it. I don't expect you to - I take your advice and we'll have a look at that.

20 **MS SCOTT:** Jan, or maybe it's going to be Luke, what happened regarding this labour hire firm? A number of you became aware of - - -

MS PORTER: He stopped employing Karen.

MS SCOTT: Right.

25 **MS PORTER:** And the company that engages the - he is actually a subcontractor. He now brings people up from Melbourne in a bus. The Karen people at the factory tell me that they think they're Cambodians or Chinese. They're not sure.

30 **MR MARTIN:** They're Vietnamese and Taiwanese mostly.

MS SCOTT: And, Luke, are these likely to be people with permanent visas or are we talking about 457s or 417s?

35 **MR MARTIN:** They're a mix of 457s, 417s, some student visas and then there are a number of permanents, as well. These workers, they've increased in numbers over the last 18 months. I've only been at Hazeldene's for a little bit less than two years. When I first started there, there was only around 40 and they've gone to about 200 now. They turn them over very quickly.

40
45 Talking to some of the people - and they're afraid to talk to people like me because they know that I'm a union and they're afraid to speak to me in fear of losing their jobs, but they've identified with me really early on in the piece that they have been underpaid and they know they're being underpaid. Some figures that were thrown at me, they're getting \$15 an hour flat rate and working in excess of 14 hours a day, sometimes up to 20 hours a day if it was leading into a weekend.

5 I'm also concerned that the use of these contractors are actually undercutting an agreement that we have on site. The company is using these workers to undercut our wages and conditions that we've fought hard for and negotiated for, and there seems to be no repercussions for doing so. Also these workers coming into Bendigo, it's taking work from local content. As an active member of the Labor Party, I'm out in the community all the time talking with people and one of the biggest concerns is no work in Bendigo. To see 10 minibuses coming up from Melbourne every day to work at a local factory, it's kind of heartbreaking to see.

15 I know there are people out there that want that work and whenever I raise this issue with the company, I'm always told, "We can't find people to work in Bendigo," and I know just from my own experiences that that isn't correct. I'm also concerned about individual contracts, too. Individual contracts can be used as a way of undercutting their wages also.

20 **MS SCOTT:** Luke, are you aware of any compliance activity undertaken by the Fair Work Ombudsman or the Department of Immigration or anyone else in relation to this - - -

25 **MR MARTIN:** We have spoken with the Fair Work Ombudsman about it, but once again they want to hear evidence from those people themselves; but these people are in fear of either losing their jobs or being deported. One of the people I was talking to actually told me that because he was in breach of his visa - because he was under a visa and it didn't allow him to work any more than 20 hours - he stopped working there because he was trying to apply for permanent residency. He has moved on to not risk that. Hazeldene's are constantly telling us all the time that there's nothing untoward going on out there. When I hear it from those people themselves, the lack of transparency is an issue there, as well. I'm going to say it's not directly Hazeldene's responsibility. It is their third party employers.

35 **MS SCOTT:** Yes, it's a hire company.

40 **MR MARTIN:** Yes. They're basically a labour hire company that is just registered online. They change their company name systematically all the time. It's like a phoenix company. They shut down and restart as something else.

MS PORTER: I actually did a company search and traced it back to Malaysia, at my own expense.

45 **MR MARTIN:** It has also been suggested to me that these companies are involved in organised crime and they are actually using migrant workers to exploit them.

MS SCOTT: Okay. Just remember, we are on transcript, Luke. All right?

MR MARTIN: Yes.

5 **MS PORTER:** I just wanted to say there is another side to this, too, when
people get permanent work; how much different the scenario is. You know,
it's not just that they're exploited in the casual workforce. It's that migrant
people are very vulnerable to - it's almost criminal what happens to them,
10 because it just breaks your heart to see their aspirations, their hopes, their joy
at being here being turned into something really horrible. It really wrecks
their work experience; their idea of what it is here.

When you give them a chance and they do get permanent work - and at
Hazeldene's credit, they are the largest employer of Karen in Bendigo. I did
15 some quick calculations. Now, I know that there are more than 30 families
who have bought houses on the strength of permanent work and most of them
have bought houses within two years of getting permanent work. They're off
welfare systems. They don't take the rental subsidies any more. Some of
them get some tax benefits because they have got many children.

20 They are fully integrated into our community. Their kids are playing
soccer, they're going to the local church and they're really valued as
employees because they turn up every day, they are hardworking, they don't
complain. I've had companies approach me to recruit Karen - "Can you find
25 some Karen?" So there is a positive side to our community; the social
capital, the building of community, all those things happen when people feel
safe and secure and can put down roots and be stable, and look forward with
hope and assurance that their income is going to be regular.

30 **MR HARRIS:** Thank you for making this contribution. It is a high profile
issue and we didn't plan for it to be a high profile issue this week. I'm not
sure you did as well, but migrant workers is - - -

35 **MS PORTER:** It just keeps coming up again and again.

MR HARRIS: Yes. It's in our report, but it's an area that we will again
address in the final, too - give further consideration. We appreciate your time
and effort to come along here today.

40 **MS SCOTT:** Thank you.

MS PORTER: Thank you for listening.

45 **MR HARRIS:** I said at the start I would give an opportunity for anybody
who has sat through this all and hasn't registered to appear who nevertheless
wanted to make a comment. Here they are. Is there anyone in the audience
who has been through this today who would like to make a comment? Please

feel free. Do you want to come up and identify yourself? You don't have to, you can just make a general comment; but if you wanted to, you can go onto the record and do it.

5 **MR WATKINSON:** Yes, I was a bit late with my submission.

MR HARRIS: No problems.

10 **MR WATKINSON:** I'm way out of my comfort zone here, but I'll do my best.

MR HARRIS: We try and run it as informally as possible, as I think you've noticed.

15 **MR WATKINSON:** Yes.

MR HARRIS: Because you've been in the audience a bit. Anyway, feel free. Please identify yourself for the record.

20 **MR WATKINSON:** I'd like to bring up - - -

MS SCOTT: Could you just identify - - -

25 **MR WATKINSON:** Sorry. My name is Peter Watkinson. I'm a security officer. I work in Bendigo. I'd like to bring up the issue of bargaining in bad faith and the better off overall set-up. I don't believe that works. The situation - I can give you an example. The company I worked for in 2011 made us vote on an EBA which had nothing but cuts to pay and conditions in it. It was put through the Electoral Commission and it was voted down
30 overwhelmingly.

A few months later, we went through the same thing again and they put the same proposal out again. Again, it was voted overwhelmingly down through the Electoral Commission. A few months later, then they put it out
35 again, the exact same agreement. This time it went through a private company. Apparently it was a well-known company. I can't think of the name, but a lot of employees vote through that system. Anyway, it was voted again down and it was also threatened it would go to a fourth vote if we did not vote for their agreement.

40 Then the fourth agreement came up and they finally changed it. They let the existing employees keep their conditions and stay on, but they made it that new employees would be on that agreement that we have already voted three times on. It got up. I don't know how, but, anyway, it got up and one
45 of the key promises was that new employees would always - the rates for new employees would still be above the award. That was one of the key promises

for the fourth vote. That might have been one of the main reasons that it got up. Also 50 votes came from nowhere, which we found surprising.

5 Now new employees are getting - actually new employees on new sites this refers to, yes, and they are now getting paid below the award. From my understanding, you're meant to be better off overall.

MR HARRIS: They are getting paid below the award?

10 **MR WATKINSON:** They are getting paid below the award. I don't have the rates with me, but it's - - -

MR HARRIS: Can you separately come and tell us the - - -

15 **MR WATKINSON:** I could give you the EBA even, too.

MR HARRIS: Yes.

20 **MS SCOTT:** We might get Michelle to talk to you.

MR HARRIS: We might get Michelle to talk to you, so we can actually go and - - -

25 **MS SCOTT:** Get some details.

MR HARRIS: - - - dig this agreement out ourselves and have a look at it.

MR WATKINSON: Yes. I'm sorry I was late putting - - -

30 **MR HARRIS:** No. That's good.

MS SCOTT: That's fine.

35 **MR WATKINSON:** I just had one small - separate from that. I just wanted to - just for cuts in general. I feel this Commission is set up just to look for cuts to basically low paid people. I'll just read what I've got here:

40 *Sunday is still the most sacred day for most people, for resting for the week ahead. Family time, religious beliefs, social events or just going out on your day off for a coffee or to the shop. The people working Sunday cannot do these things. That's why those people should be compensated. They are also some of the lowest paid workers. You cannot compare a Saturday to a Sunday. Hospitality and retail are the start. Other industries will follow.*

45 *It's not a 24/7 world as many would like to say that want lower wages. I can assure you all that unemployment will not go down.*

Your coffee and prices will not go down. The only thing that will go down is wages. If a business has to put its hand in the pockets of its workers, it should stay closed. Maybe it's because it's Sunday is why some businesses struggle, not because of penalty rates.

5

The next discrimination we all face is wage inequality. We are all doing a job. The government's inquiry is looking at the wrong people. Joe Hockey earns the minimum weekly wage per hour, plus conditions, and he is for lower wages. He should lead by example and start with his own. We are all here to discuss cutting the lowest paid workers. How is that fair?

10

That's all, thanks.

15

MS SCOTT: Thank you very much.

MR HARRIS: Okay. Can you please identify yourself for the record, as well.

20

MR MILLS: Certainly. My name is Gareth Mills and I live here in Bendigo.

MR HARRIS: Gareth, have you got something to put on the record?

25

MR MILLS: Yes. I feel obliged to begin though just by saying that these comments today are as a private citizen and not in the context of my employment.

MR HARRIS: Sure.

30

MR MILLS: Or in the context of any representational roles that I might hold.

MR HARRIS: No problem.

35

MR MILLS: I hope not to waste your time, but I wanted to talk about the ideas behind a couple of factors around employment and the relationship that workers have in the local economy. I suppose penalty rates is topical today, so I might just start with that. I am gratified to hear that earlier you said the Productivity Commission is not for getting rid of penalty rates altogether, but looking to reform what was termed archaic. I think the real challenge for the Commission is to find a way towards reform in a complex area without affecting the bottom line for the workers.

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45

I think it was made quite eloquently by some of the - like the gentleman who was from the Nursing Federation earlier and also the Ambulance Union and Pete himself, as well, that the discretionary spending that low income

people have is largely due to the penalty rates that they're able to garner from the work that they do. The discretionary spending that they have is money that's spent largely in local businesses and I suppose it's not just the discretionary spending, but the necessary spending, as well.

5

I suppose my concern - and it arises out of the Bendigo business group's thing earlier on - is that many of the businesses in Bendigo are very, very small businesses and my concern about lowering penalty rates or reducing remuneration for workers is that that has a flow-on effect to those very small and vulnerable businesses themselves. I think in a context like Bendigo it's going to form a downward spiral and I have concerns about that, and would urge the Commission in its deliberations to take that into account.

10

MR HARRIS: I think the lady who spoke this morning from - I've got her down as the BBC here, so I'm going to have to look up what the BBC was, but - the Bendigo Business Council. She made that as her initial point. It's not as if it escaped the discussion this morning either. She did talk about the linkage. She did in the context of the minimum wage actually, but nevertheless it was the same point in reality.

20

MR MILLS: I take the point and that's where I suppose I got it. I've got further in my notes that I'm heartened that there isn't an overwhelming view of local businesses that the minimum wage should be lowered. I think that was the context that she put those remarks in.

25

MR HARRIS: That's right, but it's the same thing. She was actually saying that - she made the linkage, I think, in her comments between that and disposable income and saying basically she wouldn't want to. I think the point is on the record and you have reaffirmed it, as well.

30

MR MILLS: Thank you.

MR HARRIS: Is there anything else I can - - -

35

MR MILLS: I had several others points. I hoped not to waste your time - - -

MR HARRIS: No, but I'm going to go through until 3.30 and then we're going to declare, so I can get Michelle on a plane home tonight at 6 o'clock.

40

MR MILLS: That's okay. Casual rates and penalty is one element of employment in the local economy. Another one is ongoing employment. I think we heard from the National Union of Workers about the value of ongoing employment and it has been topical in a political discussion about the value of a good job. The presentation from the National Union of Workers mentioned there that purchasing houses was possible in a place like Bendigo, when that was possible, so I'd like to urge the Commission to keep

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in mind the value of ongoing employment as a fundamental part of the employment make-up. I did have another final point but I might - - -

5 **MR HARRIS:** No, well, hang on. If you can discover it, that's fine, but otherwise we'll get a new correspondent on the record.

MR NOBLE: Yes. My name is Alex Noble. I'm an official with the National Union of Workers, so the organisation that Luke is a delegate of.

10 **MR HARRIS:** Yes.

MR NOBLE: I just wanted to add some further comments on the issues that Jan and yourself were speaking about.

15 **MR HARRIS:** Sure. Go right ahead.

20 **MR NOBLE:** Especially in relation to the exploitation of migrant workers. One of the common things we see in relation to the exploitation of migrant workers is they are almost always engaged by a contracting company. What that contracting company is, is essentially a labour hire company; so the host engages them to provide labour to the facility. One of the main reasons that we believe that occurs is because there is a complete absence of regulation of the labour hire industry. What that means is that anyone can come along, set up a business for about \$500, have an Excel spreadsheet and a mobile phone and they can trade in labour.

30 Now, we think that is what contributes to a number of these issues. Often we'll make claims or try and follow up with that labour hire agency, the company. They will then go into voluntary administration and then they'll resurface with another business name three days later. We think one of the main measures that could be introduced to address this issue is a national licensing system for labour hire regulation, because that would prevent these, for want of a better term, dodgy operators from operating in the industry.

35 **MR HARRIS:** We might have a look at that, so thanks very much for your contribution. A final point?

40 **MR MILLS:** My final point, yes.

MR HARRIS: Yes.

45 **MR MILLS:** I picked up, I suppose, on the submission that VECCI made at the beginning of the day and their concerns were about strike action and the appeals to overturn that or to cease that strike action, and the prospect of having considered in that decision whether or not an escalation of action had taken place. I submit there that if it's necessary to consider that at that point

in time, then it effectively would make an escalation of activity necessary in any industrial campaign in a bargaining situation.

5 **MR HARRIS:** No, I think we discussed the incentive systems and I see what you're saying.

10 **MR MILLS:** What I'm saying is my concern is that something like that which was so black letter, as you might have said before, could lead to unintended perverse consequences.

15 **MR HARRIS:** Yes. That's a good point. Okay, I'd like to thank everybody who is still here who made the time to come along today and, those who aren't here, on the record I'd like to thank them, too. It has been good to be in Bendigo. Thanks a lot.

**MATTER ADJOURNED AT 3.29 PM
UNTIL MONDAY, 7 SEPTEMBER 2015**