



**Australian Government**  
**Productivity Commission**

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**PRODUCTIVITY COMMISSION**

**INQUIRY INTO WORKPLACE  
RELATIONS FRAMEWORK**

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

**TRANSCRIPT OF PROCEEDINGS**

**AT OLD WOOLSTORE APARTMENT HOTEL, HOBART  
ON MONDAY, 7 SEPTEMBER 2015, AT 11.30 AM**

## **INDEX**

	<b><u>Page</u></b>
<b>TASMANIA'S OWN REDLINE COACHES: KATHY DWYER</b>	<b>98-111</b>
<b>LAUNCESTON CHAMBER OF COMMERCE: MAREE TETLOW</b>	<b>111-128</b>
<b>UNIONS TASMANIA: STEVE WALSH PAUL GRIFFIN MARK MANN ANDREW OSTLER DAVID BALL JOSH COCKSHUTT</b>	<b>129-146</b>
<b>UNITED VOICE TASMANIA: JANNETTE ARMSTRONG LITITIA RICHARDSON</b>	<b>147-157</b>
<b>TASMANIAN SMALL BUSINESS COUNCIL: ROBERT MALLETT</b>	<b>157-161</b>
<b>AUSTRALIAN MANUFACTURING WORKERS UNION: JACOB BATT</b>	<b>162-164</b>

**MR HARRIS:** I'll formally open the proceedings. Welcome to the second of the public hearings of the Productivity Commission's national inquiry into Workplace Relations. I am Peter Harris. I am the Presiding Commissioner. Deputy Chair of the Commission Patricia Scott, is with me. The purpose of  
5 this hearing is to facilitate the scrutiny of the Commission's work and get comment and feedback on the draft report following this hearing in Hobart. Hearings will also be held in Melbourne, Canberra, Adelaide, Sydney and in Ipswich. We will have a final report done for November 2015.

10 Participants today and those who have registered their interest 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 completion, which means effectively maybe as late as early next year released by the government, but, as I said, we will complete our report by  
15 late November. We like to conduct all the hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason, comments from the floor will not be taken in the course of the proceedings but at the end of the day I will provide an opportunity for anybody who wishes to and has not been a participant, to make a brief  
20 comment if they so require.

Participants are not required to take an oath, but should be truthful in their remarks and are welcome to comment on issues raised in other submissions, as well as their own. The transcript will be made available to  
25 all the participants and it is up on the Commission's website as soon as we can get it done. The submissions are also available on the website. While we do not permit video recordings or photographs to be taken during the proceedings, updating of social media such as Facebook or Twitter is quite normal; although we do ask all members of the audience to ensure that their  
30 mobile devices are switched to silent.

(Housekeeping matters)

I'd now like to welcome Kathy Dwyer. Is it Kathy?  
35

**MS DWYER:** Yes.

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

40 **MS DWYER:** Thank you very much. I'm Kathy Dwyer, human resources consultant, appearing on behalf of Tasmania's own Redline Coaches. In short, in background, Tasmania's own Redline Coaches provides passenger services throughout Tasmania. They primarily fall into four categories: we transport customers from Launceston and Hobart airport to relative city-  
45 based hotels; in regional areas we transport around the state to the nearest hotel named as general access; we also do school runs and charter work. In addition, we also have two hotels: one in Launceston and one in Hobart.

5 As a general observation, we would like to thank the Commission for the opportunity to provide some feedback on the draft report. Our general observation is that there are a number of areas of recommendations for improvement that appear very reasonable, albeit that there are some issues or concerns about how to resolve some of these things. We would like to specify some specific areas for comment and for support.

10 In relation to public holidays, it is noted the recommendation to amend the National Employment Standards so that employers are not required to pay for leave or additional penalty rates for any newly designated state or territory public holidays. We are very supportive of this. Obviously being a business of some 200 people, we do actually have quite a substantial impact being in the service industry.

15 In relation to long service leave, is our next comment. We have recognised that the basis for the provision of long service leave to employees is no longer relevant in this modern age. The recommendation that relates to the standardisation of long service leave qualifying periods and entitlements is strongly supported. It does, however, appear there is an opportunity that may have presented itself relating to reviewing the ability of an employee to request and take periods of long service leave in a manner that is currently not allowable under the long service leave legislation, i.e., employees are not legally able to take single days. That would be of a benefit to the employee and the employer.

20 In relation to that comment, I can state that I have come across many organisations that I've worked with who have been approached by employees to amend how they can take their long service leave for their own personal benefit and the company has wished to actually go with that. In a lot of cases, the business has done it. I'm suggesting there is an opportunity there to bring that into the modern age.

35 In addition, there is also an opportunity to explore the possibility and appropriateness of providing the ability of an employee to request to be paid out a portion of their long service leave. That would also be of benefit to the employee and the employer. Again, I have seen this occur in other businesses and it would be very handy if that was unified right across the nation. Essentially our recommendation would be that the inquiry expands this area to include discussion and add possible recommendations to have long service leave better reflect the requirements of the employees and employers in relation to how long service leave is acquitted and provide the option to cash out a portion.

45 Our next comment is in relation to enterprise bargaining and the discretion to overlook procedural defect. Whilst not in Redline Coaches, in many other businesses I have found that cases have been lost on a procedural

5 element even where the complaint and the subsequent action was accurate and appropriate. We would be strongly supportive of having that amended. That is with the recognition that robust procedure is actually good business practice; so we're not suggesting we take out the procedure, but a bit more flexibility.

10 In relation to Sunday penalty rates which are notified to be for cafes, hospitality, entertainment, restaurants and retail industry and the bringing of these Sunday rates into line with Saturday rates throughout those industries, that is a recommendation that the business strongly supports. We do recognise that some may argue that there should be no rates on Saturdays or Sundays. However, this is seen as a good step in the right direction.

15 Interestingly for Redline Coaches, we would then have a dilemma. We would be picking up passengers from Hobart Airport, transporting them to our hotel in Hobart or Launceston and our people who would be driving the coaches would be paid the Sunday penalty rates at double time, and yet the people on the receiving end who would be servicing those very same people would be receiving less penalty rates. We would actually like to make a  
20 recommendation that the Commission consider including the passenger transport industry in this definition. Without the provision of passenger transport, which is critical to support the community and the tourism sector, there will be disadvantages for businesses such as Redline and other passenger services.

25 Our next comment is in relation to adverse action. Over the past few months, the businesses obtained anecdotal evidence that the area of adverse action is being used to pursue unfair dismissal claims that are particularly attractive due to the provision of the uncapped compensation that is being  
30 awarded. Whilst it's recognised that the review has recommended a number of reforms and the role the courts are playing in establishing legal precedence, retaining the uncapped payments for breaches is seen as an incentive for dismissed employees to use this provision in the Act rather than the more appropriate unfair dismissal provisions. We would recommend that  
35 the Commission give consideration to placing a cap on the compensation that can be awarded.

40 In relation to the BOOT test and the shift to the new no disadvantage test, having gone through this exercise we can confirm that the current practice does lend itself to a line by line approach. The recommendation to move the process to where there is a global test which takes into account the sum of all benefits of an agreement and to test those against the overall benefits of the award while allowing employees and employers to develop agreements that represents a win for both parties, is highly recommended by  
45 the business.

5 In relation to bargaining representatives, we must have more than a trivial share of the workforce. This is particularly of importance to us because we do not have a highly unionised workforce and the recommendation that a non-union bargaining representative must secure a minimum of 5 per cent support of the employees is accepted as a very reasonable and sensible approach. The new type of employment enterprise contract that is proposed and the rationale that this be accepted is noted and is supported. It is, however, noted that there would need to be quite a large amount of education and promotion, and particularly skill development, in relation to how these would be developed and how they would work. It is noted we now have quite a number of options which in itself may be confusing to some people.

15 In relation to the comments about cashing out for annual leave, the recommendation has been put forward to extend this ability to existing days of 20 days of paid leave and with the remainder to be cashed out as an option. We would like to recommend that this be pursued. It is noted that the ability to do this is already in place in various industries utilising existing employment contracts. It is recommended that the ability to do this is extended to all, as there are great benefits for both the employer and the employee.

25 Lastly, but not least, the ability for casuals to offset part of their loading for additional entitlements such as personal or carer's leave. Our recommendation would be that caution should apply to this and this is due to the possible high costs involved in administration and monitoring of the offset of part of casual loading. It should be noted that there are other mechanisms that we are using, Redline is using, which is, i.e., banking of hours which allows employees to sign an individual agreement, allows them to bank a certain amount of hours which then they can accrue and utilise for any personal reasons, and there are no limits to that. We are currently utilising that and we find that that works very well.

35 When we offset that against the costs that could be incurred in relation to the administration of this, we would simply mention caution for that reason. We have not yet had an opportunity or a chance to actually do those costings for you, I'm sorry.

40 **MR HARRIS:** No, that's great. Thanks for your overall picture. In my case, I'd like to work backwards through the thing.

**MS DWYER:** Yes.

45 **MR HARRIS:** Individual agreements, IFAs.

**MS DWYER:** Yes.

**MR HARRIS:** Is that the mechanism that's used for this banking of hours that you referred to?

**MS DWYER:** Yes, it is. It is offered to all employees.

5

**MR HARRIS:** How have you found IFAs? There is a general perception in submissions given to us in the first round that these are difficult to use.

**MS DWYER:** We use it specifically for banking of hours, so it's a specific agreement and it is well utilised. As a matter of fact, if we lost the ability to do that, we would probably lose a lot of our casual workforce. Our casual workforce, particularly when they do the school runs, obviously have a big downtime for weeks during school holidays. They utilise the banking of hours so that they can actually have that money during those down periods of time.

10  
15

A lot of people who are also in the age group where they may be receiving a part pension will use that mechanism to contain their earnings so that they can actually manage to retain the pension or part thereof.

20

**MR HARRIS:** Okay.

**MS SCOTT:** What proportion of your workforce is casual or what sort of positions are we talking about? You mentioned the school run, so I imagine bus drivers.

25

**MS DWYER:** Primarily coach drivers.

**MS SCOTT:** Coach drivers.

30

**MS DWYER:** A lot of the contracts are actually with the government and are for a specific period of time. As a consequence, there is no guarantee that that contract will continue, hence, we have - - -

**MS SCOTT:** Right.

35

**MS DWYER:** Probably quite a large portion of our airport drivers are casual, with varying runs.

**MS SCOTT:** Let's see if I've got it right. So maybe it's the case that in summer or whenever your tourist season is high, you might well find that you've got more hours to offer your coach drivers. They bank up their hours.

40

**MS DWYER:** Yes.

45

**MS SCOTT:** So they might get paid a wage based on standard hours but in fact they're banking their hours.

**MS DWYER:** Correct.

5 **MS SCOTT:** Have I got that right?

**MS DWYER:** They are. For example, we have one person who is on a 38-hour week.

10 **MS SCOTT:** Yes.

**MS DWYER:** They work in a rostered 43 hours a week and they bank the difference between the 43 and the 38.

15 **MS SCOTT:** Okay.

**MS DWYER:** Some of our casual employees will say, “I would like to get paid up to 20 or 25 hours a week and anything over and above that, I wish to bank and I will then utilise it another time,” and it works really well.

20 **MS SCOTT:** It sort of effectively streams their income over the year.

**MS DWYER:** It does.

25 **MS SCOTT:** So any of these requirements or restrictions they might face in relation to other aspects of their life, then it allows that to average that out.

**MS DWYER:** Absolutely. That is one of the key attractions to that and it has a very high usage rate.

30 **MS SCOTT:** In fact you could have genuine individual flexibility, so Peter could be on 20 hours and somebody else could be on 15.

35 **MS DWYER:** We do. That is exactly how we work it. Each person has an individual agreement and we work out exactly what they need and what they want.

**MS SCOTT:** So this is individual flexibility agreements that are effectively an offshoot of your EBA then.

40 **MS DWYER:** Correct, EBA.

45 **MR HARRIS:** We’ve had submissions that have told us that there has been a lot of union resistance in some industries to allowing IFAs to be well used. In other words, the ability to use them is significantly limited by comparison with what might otherwise be made available. That’s not your experience?

**MS DWYER:** No.



5       **MS SCOTT:** Given your 30 years' experience in HR and Workplace Relations, would you be recommending IFAs to other businesses or do you think the unique circumstances of coach drivers in Redline means that it's good for that sector and for that firm, but not necessarily other sectors and other businesses?

10       **MS DWYER:** No, I'd highly recommend it for all industries. One of the things I have found particularly with Redline, either clerical staff, any of the technical staff, any position can virtually do banking of hours where there is a requirement for them to work over and above the standard hours at any particular given times.

15       **MR HARRIS:** I notice that in the submission it's mentioned that Redline is accredited in New South Wales as well as in Tasmania.

**MS DWYER:** It certainly is.

20       **MR HARRIS:** Is there any difference in approach in New South Wales or is there - - -

25       **MS DWYER:** Not from us. I guess in highlighting that, it just means we need to be conscious of any other employment laws in Victoria and New South Wales that may apply. We haven't had any difficulties. It just means that we are crossing over - - -

**MR HARRIS:** For example, this question of enterprise bargaining and it being used to limit the ability to use individual agreements.

30       **MS DWYER:** Yes.

**MR HARRIS:** It hasn't occurred more in New South Wales, for example, than in Tasmania?

35       **MS DWYER:** No. Our employees are employed here in Tasmania and we send them to New South Wales to work, so they're not based in New South Wales.

40       **MS SCOTT:** One more further clarification. So the ability for people to access individual flexibility agreements, how is this known to the workers or why are the workers accessing this? Is it something that the firm advertises because it's in the firm's interest or is it something workers have approached the firm about, seeking to access it? Could you talk about that for a bit, please.

45       **MS DWYER:** I wasn't there in the inception of it, but certainly how it is working now, everyone is told about it in induction.

**MS SCOTT:** Right.

5     **MS DWYER:** It is certainly well known throughout the group, so as soon as they go onto the floor or wherever they go, the employees let them know about the ability.

**MS SCOTT:** Yes.

10    **MS DWYER:** It's also in their induction manual and they are told that if they'd like to enter into such an agreement and access the ability to bank hours, all they need to do is approach us. Again this is not something that has been pushed forward or even pushed back against by a union or anybody else.

15    **MS SCOTT:** Has the firm sought to use them in relation to non-regular hours or outside the normal core hours? Has the firm actively used them for things other than banking?

20    **MS DWYER:** Primarily for banking is my understanding, yes.

**MS SCOTT:** All right. Fine.

25    **MR HARRIS:** I've got no questions on - when you talked about cash out of annual leave, that's clear-cut. The enterprise contract, you support the concept that the market information provision of it will be quite important.

30    **MS DWYER:** Yes, and the actual skill development is where it tends to fall down, to be honest with you.

35    **MR HARRIS:** That's right. Because the proposition as it's raised in that area is in relation, as much as anything, to small, medium enterprises. They won't have necessarily the skills to be able to - - -

40    **MS DWYER:** Sure.

45    **MR HARRIS:** We do agree that's an area with a little bit more work in it. Bargaining representatives, again you're happy with the 5 per cent. We note that we put the 5 per cent up because we didn't have a better number, but that sounds to you like it would be a reasonable reflection of workforce need?

**MS DWYER:** It sounds like a reasonable reflection, yes.

50    **MR HARRIS:** Adverse action. Okay, I understand what was put forward by you in relation to that. Now, the BOOT versus the no disadvantage test. In your view, is it likely to be significant other than in this question of ensuring that it isn't an holistic test versus a line-by-line test? In other words,

is there going to be much difference between the movement of BOOT back to no disadvantage if the recommendation is retained and the government goes down that path? Do you think it will make what I'd call a significant difference or is it more a clarity of understanding kind of - - -

5

**MS DWYER:** I believe it's more a clarity of understanding and making sure that people understand how it operates and how it applies, and that it is fair and equitable. I think there's a lot of fear out there to perhaps moving towards these things because of the unknown.

10

**MR HARRIS:** We've heard in other circumstances that it still defies simple description to say how no disadvantage would work. Would that be your experience, as well?

15

**MS DWYER:** Yes. Sometimes actually doing the trade-offs and actually coming up with a holistic - it can be challenging at times, yes.

**MR HARRIS:** But equally we have heard that there's enough history around to enable that to be well judged by the Fair Work Commission.

20

**MS DWYER:** I'd agree with that.

**MR HARRIS:** So would that be your experience overall?

25

**MS DWYER:** Yes, it would be. Correct.

**MR HARRIS:** Long service leave. Now, this idea of cashing out long service leave, I don't know that it has really been that widely discussed as yet. In principle, it would appear that that would not be of much advantage to a firm. Can you just explain why a firm would be interested in cashing out long service leave?

30

**MS DWYER:** Would want to do it? Traditionally what we've found in human resources is that long service leave accrues over a period of time and there tends to be difficulty in getting your long service leave. Essentially you end up delaying paying it out until later, and years later, normally at a much higher cost. It's also difficult sometimes for employers to cover that person if they are away for a significant period of time.

35

**MR HARRIS:** Right.

40

**MS DWYER:** There are certain on-costs with that. One of the reasons that has been put in is that this business has been approached by staff, and I have known many other businesses that have been approached, to actually have portions of their long service leave or their long service leave in total paid out. One business I did work for, we negotiated in an EBA the ability to pay it out retaining 20 days. You had to retain 20 days.

45

5       The people who were applying for it were doing so for their own personal reasons. Someone wanted a car. Another person wanted to put a deposit on a house. Somebody was in dire financial trouble because they were gambling and their life was basically going down the toilet, and they needed to offset that and they couldn't afford a holiday. They also all had the ability to purchase additional leave, annual leave, for the fact of having this long service leave, they saw it as a moot point.

10       From a business perspective, it allows us (1) to perhaps come to an agreement with the employee that actually suits them and, as a consequence, does suit us. It's paid out at a lower rate from the cost perspective and that is a primary consideration we would give. It essentially means that we can even spread that long service leave over different periods.

15       **MR HARRIS:** This problem with potentially not being able to pay out long service leave in small increments, that presumably is based around state legislation. Is that correct?

20       **MS DWYER:** Yes.

**MR HARRIS:** Because of the differentiation between each state in terms of its long service leave provisions.

25       **MS DWYER:** I'm not aware of any state that allows you, under the legislation, to pay it out. As a matter of fact, different legislation has different requirements as to how you take it and it really isn't relevant to the modern day. Look, companies out there are breaking the law by doing it, but they're doing it with good intentions and at the request of the employee most of the time.

30       **MS SCOTT:** Going through an EBA negates the limitations set out by legislation?

35       **MS DWYER:** It certainly did in the case that we negotiated.

**MS SCOTT:** Okay.

40       **MS DWYER:** We gave it a go and we came to agreement with the union, and the Commission signed it off. I can only say that it worked and it's not something that I've ever really come across anybody else doing though, but certainly had great benefits for the business.

45       **MS SCOTT:** Can I just check back on - I'm sorry, I'm going to move off long service leave.

**MS DWYER:** Sure.

**MS SCOTT:** Peter will still probably have some questions on it. In relation to Redline's EBA, is it one EBA, several EBAs?

5     **MS DWYER:** One EBA.

**MS SCOTT:** One EBA. Covering all the diversity of your workforce?

10    **MS DWYER:** Not the hotels. The hotels have their own, but certainly Redline as a passenger service has their own EBA, yes.

**MS SCOTT:** Right. Thank you.

15    **MR HARRIS:** In terms of legislation, we can certainly make recommendations about states reforming their own long service leave provisions. Whether the state governments pay any attention is, of course, entirely a matter for them. The alternative is to look at this as part of the National Employment Standards. So that wouldn't be a change which would  
20    invalidate any provision of long service leave, but it would be a change that might authorise a change, including this idea that people could take long service leave in small amounts.

**MS DWYER:** Small amounts, yes.

25    **MR HARRIS:** So that might be what you might call a permission based opportunity rather than a variation. Is that what you roughly had in mind?

**MS DWYER:** That is very much what we would like to see happen. We see it as in going that way you wouldn't need to change the legislation itself. It's  
30    more an overriding and, you're correct, giving permission.

**MR HARRIS:** Yes.

35    **MS DWYER:** Certainly with casuals having access to long service leave, it would provide them with an opportunity to take that long service leave in a different manner, as well.

**MR HARRIS:** I noted your support for the public holiday recommendation.

40    **MS DWYER:** Correct.

**MS SCOTT:** Just on adverse actions, I appreciate you're referring to anecdotal experiences, but amongst HR practitioners has this got sort of like  
45    early warning signs?

**MS DWYER:** Yes, and through solicitors.

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

**MS DWYER:** Going to conferences where they're presenting and you're sitting back going, "Oh, wow, this is going to" - we haven't had any at Redline.

**MS SCOTT:** Yes.

**MS DWYER:** And I haven't experienced any directly myself.

**MS SCOTT:** But the concern in - - -

**MS DWYER:** But certainly there are red flags flying everywhere at the present time.

**MS SCOTT:** Okay. That's what we're hearing, too. All right. Thank you for that clarification. You talked about procedural elements with EBAs and some experiences you had over your career. Could you talk a little bit more about that?

**MS DWYER:** In, sorry?

**MS SCOTT:** You mentioned the desire on one hand to have robust procedure, but on the other hand you didn't want to find that you ran foul of the law because of some tiny technicality. Could you talk a little bit more about that?

**MS DWYER:** Yes. Over the years I've seen a lot of unfair dismissal cases and a couple of - - -

**MS SCOTT:** I'm talking about EBAs here.

**MR HARRIS:** There is a procedure in EBA, like with the staple case and that sort of thing.

**MS SCOTT:** I think you used the phrase "robust procedure" and the "procedural element". I thought it was in relation to EBAs you mentioned that.

**MR HARRIS:** Was that in relation to unfair dismissals?

**MS DWYER:** Correct.

**MS SCOTT:** Okay. Sorry. I mischaracterised that.

**MR HARRIS:** We are interested in enterprise bargaining and procedural defects there. Of course we have a recommendation equally on the Fair

Work Commission being able to look through that and decide whether it was material or not.

**MS DWYER:** Yes.

5

**MR HARRIS:** So we're interested in that area, too. On unfair dismissals, agreed, we have the same conceptual proposition in that case, as well.

**MS DWYER:** Correct.

10

**MS SCOTT:** And you're supportive of our focus on substance over form.

**MS DWYER:** Absolutely, yes.

15

**MS SCOTT:** All right.

**MS DWYER:** There's nothing worse than seeing all that good work go out the window because of the procedural - - -

20

**MS SCOTT:** Leaving aside Redline for a moment, what would you say would be people's understanding about unfair dismissals? The law as opposed to sort of what they hear on the street and so on.

25

**MS DWYER:** There is confusion. We don't have a high unionised workforce. One of the things that we are currently doing in Redline is putting in some very robust procedures so that people are aware up-front of the requirements and possibilities of dismissal, and how they occur outside of that and, as a general observation, people don't really know where to go if they have multiple issues. For example, it might cross jurisdictions. The employee ends up in a quagmire and, quite frankly, the employer ends up with things coming at them from multiple directions and it is just incredibly costly for all.

30

35       Whilst I recognise that's going into another area of the report, the experience I've had in HR, I recognise the difficulties in cutting out perhaps one of the tribunals or commissions and only going to one where the person has a clear claim in another jurisdiction. I do believe there is an avenue or there are ways that person can go to one forum and the other issue still be considered and taken into account. It takes years to sort out some of these  
40       issues and it's just way, way too long and too destructive for all parties concerned. I believe we can do it much better.

**MS SCOTT:** Thank you.

45

**MR HARRIS:** I don't have anything else from the list.

**MS DWYER:** Thank you very, very much for - - -

**MR HARRIS:** That was really very useful for you to come along and make these comments here today and also to allow us to delve in your experience.

5 **MS DWYER:** Yes.

**MR HARRIS:** Not just Redline, but in other environments.

10 **MS DWYER:** You're welcome.

**MR HARRIS:** Getting the HR professionals along for advice is quite a benefit to us.

15 **MS DWYER:** Thank you. It has been a pleasure to attend and thank you for doing this.

**MS SCOTT:** Thank you, Kathy.

20 **MR HARRIS:** Thanks a lot. Okay, who do we have next? Launceston Chamber of Commerce. Is the Launceston Chamber of Commerce available? If you could identify yourself for the purposes of the record.

25 **MS TETLOW:** Maree Tetlow, executive officer at the Launceston Chamber of Commerce.

**MR HARRIS:** Thanks for coming along today, Maree. You have sent us a bit of a general descriptor, a sort of matrix of the sort of issues. Do you want to talk to that or just - - -

30 **MS TETLOW:** I guess I just wanted to, if you're happy, provide an introduction.

**MR HARRIS:** Pick the eyes out of it kind of thing, yes.

35 **MS TETLOW:** Yes, and just to let you know who we are. The Launceston Chamber of Commerce represents around 240 actual business organisations in the north of the state. We represent businesses as far as Scottsdale and down through basically the whole north; the Tamar Valley down through to the northern midlands area. We did a survey prior to the March submission.  
40 84 businesses completed that. That just gave us a sense of what our members were thinking. That helped to provide the substance of the submission we provided to you in March.

45 The key themes in our view that came through from the submission were around the need for labour flexibility or more flexibility between both parties, but not necessarily a race for the bottom in regard to wages. I suppose the comment there would be, there is a sense that - well, Tasmania has not really



had a mining boom as such, but with the end of a mining boom, I think Australians are acutely aware that we are now living beyond our means and some form of restructuring at all ends is probably going to be required.

5       A lot of the sectors that I'm reporting on are actually export facing and need to be globally competitive. For example, we represent businesses like Bell Bay Aluminium - these are the bigger businesses obviously - Tas Alkaloids, which are globally facing, and then even the service businesses are supporting those bigger businesses. So the productivity restructuring - and to  
10       quote one of the members, the current system is too pro-employee. Now, that's their sense of where it is at the moment.

      We're also concerned about youth unemployment. Northern Tasmania and the north-west; we don't actually represent them, but I think it's still  
15       important to note that we have high youth unemployment. We would like to see additional measures and flexibility to encourage students to be employed after school or more opportunity for young people to be exposed to the workforce, and what the requirements of working are. In some instances, it might actually put them off working in some industries and actually ensure  
20       that they continue on in some higher education or vocational training. I think that's a really important consideration.

      I'm really happy now to answer any questions you might have for me. You've seen our matrix and I've also got a bit of a case study that I can talk  
25       to you about in regard to enterprise bargaining, as well. Once we get there, I can talk to you about that.

**MR HARRIS:** Okay. Shall we go down just through the sequences in the  
30       boxes?

**MS TETLOW:** Yes.

**MR HARRIS:** You've mentioned some level of support for an earned income tax credit under specific circumstances for low wage families.  
35

**MS TETLOW:** Yes. The main reason for that is we're not exposed to that form of support, but in principle it sounds fine, I guess is the theory.

**MR HARRIS:** So the concept in-principle there is that you'd see an EITC as  
40       being of some value because it might relieve employers of the obligation of paying the minimum wage.

**MS TETLOW:** That's right.

45       **MR HARRIS:** Either at particular times or do you mean continuously throughout?

5 **MS TETLOW:** Well, the aspect there, I suppose it depends on what is considered - if you've got a minimum wage - there was one aspect in your draft report that I generally had the sense that our community doesn't want to see a special minimum wage for our region. We don't want to go minimum, minimum wage.

**MR HARRIS:** No.

10 **MS TETLOW:** If that would mean, therefore, that EITC was able to support some of these areas in regional centres, then that would be a good thing.

15 **MR HARRIS:** In other words, in a regional area the statutorily set minimum wage might cease increasing, but a tax credit might continue to see the income earned by people on the minimum wage continue to increase.

**MS TETLOW:** Yes.

20 **MR HARRIS:** So you get a demand benefit, if you like, of people being able to spend that full amount of additional wage, but the employer doesn't incur the cost.

**MS TETLOW:** That's right.

25 **MR HARRIS:** I see the proposition.

**MS TETLOW:** If that should assist. Sometimes these things can have an unintended consequence, but should that assist with encouraging greater employment.

30 **MR HARRIS:** Yes. Everything to do with the tax area has unintended consequences.

**MS TETLOW:** Yes, absolutely. I appreciate that.

35 **MR HARRIS:** Every one of us just automatically should say that whenever we mention a tax issue.

**MS TETLOW:** Yes, that's right. Exactly.

40 **MR HARRIS:** Enterprise bargaining.

**MS TETLOW:** Yes.

45 **MR HARRIS:** You have a case study and we are, as I mentioned earlier to our previous witness, very interested in aspects of enterprise bargaining. It is often suggested in a sort of highly generic sense that there are problems with enterprise bargaining, but getting people to be specific about what they would

do to the enterprise bargaining system has proven somewhat difficult. If your case study is illuminating, that would be very helpful.

5 **MS TETLOW:** It's illuminating in regard to, I guess, the frustration around the staple in the wrong place sort of scenario. There is one of my members who is an NGO in the social community space and he said, by way of background, they had previously spent nine months negotiating an EBA which failed by two votes at the first ballot.

10 *After a period of renegotiation, it was subsequently passed with a significant majority, to then be rejected by the Fair Work Commission on the technicalities outlined below.*

He is specific about that.

15 *We are now forced to go back to the ballot again. Whilst I understand and respect the legalities imposed by legislation, the pedantic nature in which the provisions are applied has a significant impact on the productivity of the organisation for no apparent*  
20 *reason or protection of the employees from any wrongdoing. The situation has now caused a potentially detrimental relationship between the organisation and the workforce. Because it has been on a knife-edge before, so to speak, they do not understand the reasons for the rejection. Rather, they are becoming suspicious that they*  
25 *must have done something wrong because the Fair Work Commission rejected the agreement.*

This is the HR manager who has written this:

30 *What happened was, in accordance with the Fair Work Act, we distributed to the staff an NERR, a notice of employee representational rights, and the Fair Work Act provides that a certain form must be used and can only contain the information on the applicable schedule to the Fair Work Act, and nothing else. Any*  
35 *deviation and failure to comply with these provisions goes to invalidity. Anyhow -*

she says -

40 *I used the NERR from the Fair Work website in April 2014, which was the old form -*

which she did not know about -

45 *and was not updated, and as such was not compliant with the Fair Work Act in its current form. I was subsequently advised from the Fair Work Commission that the enterprise agreement cannot be*

5                   *passed because the NERR is not compliant with the Fair Work Act, notwithstanding the fact that the NERR was provided by the Fair Work Commission. I appreciate that the obligation to ensure legislative compliance ultimately rests with me, but the substance of the content between the two forms is the same. For example, on the old former NERR, one inserted a specific union, i.e., HACSU in our case, whereas the new NERR refers to “union”. It just seems to be bureaucracy at its best.*

10                   *At this time, as it came to light, I was speaking with the industrial organiser from the union and he said that the Fair Work Commission had struck down another eight enterprise agreement applications that week for the same reasons and we’re equally annoyed.*

15                   **MR HARRIS:** Fine. We would appreciate receiving that description.

**MS SCOTT:** That would be very worthwhile.

20                   **MS TETLOW:** Okay.

**MS SCOTT:** Very worthwhile for us to get that example, because we can take it further.

25                   **MS TETLOW:** All right.

**MS SCOTT:** And use it. If, for some reason, someone has a reservation about that, can they please talk to, say, Leonne, and we might be able to work something out. All right?

30                   **MS TETLOW:** Yes, sure.

**MS SCOTT:** We would be very, very keen to get an example.

35                   **MS TETLOW:** Yes.

**MS SCOTT:** They can be extremely powerful.

**MS TETLOW:** Yes, exactly.

40                   **MR HARRIS:** Plus we can follow up with the FWC to track has there actually been such a history.

**MS TETLOW:** Right.

45                   **MR HARRIS:** Once you find one, you can follow through.

**MS TETLOW:** Right.

**MR HARRIS:** But you've got to find them to start with.

5     **MS TETLOW:** Yes, that's right.

**MR HARRIS:** And is it a pattern.

10    **MS SCOTT:** Do you know what happened eventually? Has it now been resolved?

15    **MS TETLOW:** No, they have to go back to negotiation. This has only happened recently. They're in the sort of position now where there is growing suspicion amongst the workforce that they're doing something dodgy.

20    **MS SCOTT:** Yes, right. I can understand your sense of distrust, because you went through a process, it didn't get up, you then went through another process, it got up and then, wait a minute, it has been rejected by the umpire. Well, I don't understand the complexity, so what is the story.

**MS TETLOW:** Yes.

25    **MS SCOTT:** Somebody tells you it's something simple, but - - -

**MS TETLOW:** How could that possibly be the case?

**MS SCOTT:** Yes.

30    **MR HARRIS:** Your next comment is on this idea of varying casual rates that we've asked for information. You're suggesting employers should have the ability to negotiate variations with employees who have been around for a fair while.

35    **MS TETLOW:** Yes. I think the question was around whether that shouldn't be sort of built into regulation or the actual award. Sort of become a requirement. Our feedback was that we'd prefer that not to be the case. I think I've got my example there that - - -

40    **MR HARRIS:** You're talking about carer's leave.

**MS TETLOW:** Yes.

45    **MR HARRIS:** And saying it has now become an entitlement rather than just an option that would arise when you actually had a carer's problem. You're looking at minimising the burden from that kind of entitlement.

**MS TETLOW:** That's right.

5 **MS SCOTT:** Our information request was we seek information about whether it would be practical for casual workers to be able - so this is not a requirement - - -

**MS TETLOW:** Yes.

10 **MS SCOTT:** To exchange part of their loading for additional entitlements, for example personal or carer's leave, if they so wish and whether such a mechanism would be worthwhile. If I interpret you correctly you're saying, okay, provided it's not a requirement - - -

15 **MS TETLOW:** Yes, that's right.

**MS SCOTT:** Provided it's not a requirement, a blanket requirement, for every casual, you don't have any objections and it could be of interest to some of your members where it relates to valued employees.

20 **MS TETLOW:** Absolutely. Again it's about that flexibility.

**MS SCOTT:** Flexibility.

25 **MS TETLOW:** Yes.

**MS SCOTT:** Okay. I've got that.

30 **MR HARRIS:** We could do this, do you think, through individual flexibility agreements? In other words, right now trading off this entitlement is not as clear-cut - well, it's not an opportunity, whereas if we create the opportunity, would you see any reason - I guess I'm asking is this a general shift or is it a shift that becomes available via an individual flexibility agreement, because an individual flexibility agreement has that requirement to have the agreement of the employer as well as the employee.

35 **MS TETLOW:** That's right, yes, so it's sort of more an individual thing. As soon as it becomes broader - and this is the point we're making here. In some instances people use the personal and carer's leave, part-time and full-time employees, as almost like an entitlement and take it no matter what  
40 the case.

**MR HARRIS:** Yes.

45 **MS TETLOW:** So if you build that in, then that would be the case almost for the casual, as well.

**MR HARRIS:** Okay. That's a useful way to think about it. I'll just note that down.

5 **MS TETLOW:** I think you're referring to a new form of individual agreement or - - -

10 **MR HARRIS:** We're looking at trying to improve the availability of individual flexibility agreements and the knowledge and understanding of their use, which came up again with the previous witness and comes up quite a lot. I think there's an observation you'll see with a couple of points in the draft report which says understanding of the options available for IFAs doesn't seem to be as widespread as perhaps it should be. The reason I wanted you to sort of talk about whether it's an IFA or not is because you were specifying valued employees.

15 **MS TETLOW:** Yes.

20 **MR HARRIS:** Which does suggest to not all of the workforce, but to a subset of the workforce. The current process that's most evident towards doing that would be an IFA, but if you had a view, for example, that said, "No, no, we don't want to do it through IFAs. We want to go through another mechanism," I'd be interested in hearing about that.

25 **MS TETLOW:** No.

**MR HARRIS:** But if IFAs looks to you like a kind of pathway, if you like, that you had in mind, then that's worth noting.

30 **MS TETLOW:** Yes, absolutely.

**MR HARRIS:** Thanks. Junior pay rates. You're suggesting leave them alone. We were suggesting should there be some value in paying not just on age but on experience.

35 **MS TETLOW:** We've been working a little bit in this area because of our concern around the youth unemployment and looking at mechanisms to help young people either continue on in study or provide greater linkages with the workforce prior to them leaving their study. The sense I get, especially from businesses that are employing young people just from school or still at  
40 school, is that they're very young and it's very difficult to determine competency when they're so green, so to speak. That was the main consideration there.

45 Absolutely, when it comes down to competency, however many months or years you may have been working, you can assess it; but if the person hasn't been in that environment, it's difficult to base competency, I would suggest.

**MR HARRIS:** Is that - - -

5 **MS SCOTT:** Yes, that's good. I am interested in your reported comments back on apprenticeships.

**MS TETLOW:** Yes.

10 **MS SCOTT:** We have encountered issues regarding apprenticeships in a number of our studies and inquiries.

**MS TETLOW:** Yes.

15 **MS SCOTT:** But getting your members' views would be very useful, so could you talk a little bit more about that?

20 **MS TETLOW:** Yes. Like I said, this connection - we've been working with Beacon Foundation through a business partnership group, which is about bringing the business sector to the education sector, especially in high schools and colleges. That came through where there was some unintended consequences of how incentives have been applied. For example, I think Cert I and Cert II, say, in a retail certificate, is being offered in a college here which is equivalent to year 11 and 12 on the mainland.

25 What was happening was they were doing their Cert I and/or II in college and then trying to get a job, and that meant they then had to be employed at a higher level in business, which actually the unintended consequence was they were the least preferred candidate because of that, because the business knows they have to do a lot of mentoring and support  
30 and training to get them job ready in the work environment. It just seems very poor that that student who is thinking they're doing the right thing is actually being disadvantaged.

35 **MS SCOTT:** This is very interesting. Is it because the course just doesn't have credibility with the - you might have someone who is trained in a course and is actually valued by the employer and they're happy to pay.

**MS TETLOW:** Yes.

40 **MS SCOTT:** Could you talk about why it doesn't work?

**MS TETLOW:** I'm not an expert in vocational education.

45 **MS SCOTT:** No.

**MS TETLOW:** I got the impression certificates I and II were primarily academic.



**MS SCOTT:** Yes, right.

5 **MS TETLOW:** What didn't involve any experience in the workplace. That was what the business was looking for to then pay at that higher rate.

10 **MS SCOTT:** So a student comes out of the college with a certificate, but instead of finding an employer that is going to greet them with enthusiasm, they actually face an employer who doesn't have confidence in the qualification.

15 **MS TETLOW:** That's right, yes. So we're looking at alternatives such as working with the colleges, because there is an incentive, I think, aligned with the college offering the Cert I and II within their institution. There is sort of talk about, well, theoretically they could perhaps share the incentive between the business that's interested in being part of this and the college and offer, to your point, a combination of academic and business exposure. I think the fact is that the current system producing these outcomes is in our mind a good reason to perhaps review what - and there are a lot of incentives, and it gets very confusing.

**MS SCOTT:** Yes. A complex - - -

25 **MS TETLOW:** Yes.

**MR HARRIS:** Yes.

30 **MS SCOTT:** Also, Peter, there can be some complex penalties that people - you might not call them penalties, but in some states if a person has actually done a Cert II, then they're not eligible to do another course.

**MR HARRIS:** Course, yes. No, you've exhausted your course subsidy arrangement.

35 **MS TETLOW:** Yes.

40 **MR HARRIS:** You might find you've done that because it was an interesting thing to do in high school, but then of course you don't have the opportunity to find - - -

**MS TETLOW:** Yes, it doesn't come with the - - -

45 **MR HARRIS:** You determine this probably isn't your career path and you want to go back.

**MS TETLOW:** Yes.

5       **MR HARRIS:** It actually applies not just in certificates. I guess the reason this is interesting is because when you come out of high school with this qualification, you're still competing in an employer's eyes with people who don't have a qualification.

**MS TETLOW:** That's it.

10       **MR HARRIS:** They are able to be paid at a cheaper rate because they don't have a qualification and so you carry the burden of almost proving at interview that it's worth paying you extra because you've got this certificate.

**MS TETLOW:** That was exactly the point that was made and in that environment, if you've got a capable young person that doesn't have the certificate, they're going to be - - -

15       **MR HARRIS:** They're a slightly cheaper rate and therefore you will start them, maybe you will encourage them to go off and get their Cert, but you've got them starting versus the person who's got the qual but isn't necessarily able to convince you at interview that that's going to translate immediately

20       into the higher return that you think you will need because you've got to make the higher pay.

**MS TETLOW:** That's right.

25       **MR HARRIS:** And this is not a question, is it, of anybody acting in an evil or an unreasonable manner. Everybody would like to see a better outcome - - -

**MS TETLOW:** Absolutely.

30       **MR HARRIS:** It's the structure that might actually impede things. So again it's worth probably considering. So thanks for that.

**MS SCOTT:** It was very useful.

35       **MS TETLOW:** No problem.

**MR HARRIS:** Penalty rates; we're very interested in everybody's view on penalty rates and I guess you are at the pointy end of this in the chamber.

40       **MS TETLOW:** Look, I got the sense that our business community felt this was a good compromise, what you are offering, and what you're suggesting. I did have one of my members in hospitality saying that they would like to see the public holiday penalty rates reviewed for both permanent and casual

45       staff. Now, don't ask me the rates or how that would work, but I thought I should just pass that comment on.

**MR HARRIS:** So this is, like, not just Sunday back to Saturday, but possibly public holidays back to Saturday.

5 **MS TETLOW:** Well, I don't know if she was actually saying that, but I just think perhaps in light of that change, does that mean also it would make sense perhaps not to Saturday, I'm not sure, but somewhere in between.

**MR HARRIS:** Could I get you to, if you can - - -

10 **MS TETLOW:** Yes, of course.

**MR HARRIS:** Entirely your choice whether you want to venture a comment of this. We've gone down the path in the draft report of saying that this penalty rate variation should be put to study on the basis of the kind of  
15 evidence that we have been able to generate by the Fair Work Commission so it is still in the hands, as it were, of the Fair Work Commission.

20 There have been hints and suggestions that this should be done via a legislative mechanism. Did your members have a view on that? And it's entirely open to you, because I'm just trying to clarify this as to whether or not there's a general sense out there that in some sense the Fair Work Commission should or shouldn't be doing this task.

25 **MS TETLOW:** Right. I haven't heard any comment. I don't think my members are au fait enough with the mechanisms that exist to make comment on that and that's why I haven't heard any such - - -

30 **MR HARRIS:** Fair enough. I wasn't trying to set you up, it's just that if you had view I'd get it and if you don't have a view, that's fine, we will leave it at that.

Preferred hours, and can we take preferred hours into a further form and you've suggested that's probably not a wise requirement at this time.

35 **MS TETLOW:** Yes, the sense I got from more than one of the members was that, look, that sort of shifts the decision-making from the employer/business owner to the employee and how often are they allowed to change their mind and, I don't know, it just conjured up a - look, the employer is always going to try and be flexible with a valued employee.  
40

You want to keep your best employees so you bend over backwards to achieve that, but I think as soon as it's somehow a legal requirement that this is the case, then what sort of consequences does that lead to, I think, is the concern.  
45

**MR HARRIS:** Fair enough. Minimum shift arrangements.

**MS TETLOW:** Yes.

**MR HARRIS:** You have gained a little bit of publicity for this.

5 **MS TETLOW:** Yes. Yes, I think I was - - -

**MR HARRIS:** You might want to say something about it, because I wonder if you have been fairly characterised.

10 **MS TETLOW:** I spoke to the media on the phone and perhaps they didn't quite pick up that our main reference was for juniors and students where there was - again about this linkage with young people, youth unemployment and providing them with more opportunity to be exposed to the workforce. That was the context of the one-hour minimum shift and that was just a  
15 suggestion. It was really to allow people - again, it's this issue about the Cert I and the Cert II and in the college system, but if you are able to elect young people or even students have their one and a half hours after school doing their service or whatever again, it allows them to see, "Well, gee, I can't imagine doing this for the rest of my life," or, "Yes, I really love it and that's what I want to do," and, "I want to continue on with higher education  
20 or I don't," yes, that was the nature of that comment.

I do appreciate that at the moment, that it is possible for students after school to work longer than three hours with parents' permission. I'm just  
25 suggesting that it should be a little bit less onerous.

**MR HARRIS:** And in terms of achieving this, because the minimum shift hours are different in different awards, to achieve a shorter number of hours than three, let's just put it at that - - -  
30

**MS TETLOW:** Yes.

**MR HARRIS:** There are two pathways in the current circumstances. One is to vary it award by award, the other is again, in terms of my previous  
35 question, to try and do this via some overall statutory change, some legislative change. Again, entirely your choice, did your members have a view as to whether this was an award-by-award kind of shift or a statutory kind of shift.

40 **MS TETLOW:** I think the whole award-by-award sort of framework that we have at the moment is very confusing. Even if you're a small business you need to go to an IR specialist to give you advice and that would be one of my issues that we need to deal with further in the next couple of questions, but I think maybe there's opportunity around regional areas or areas that do  
45 have high unemployment to allow for - I'm just keen for people to get some exposure and some work experience so that they do - how often do you hear

young people say, “How can I get a job when I don’t have any work experience, so therefore I can’t get a job.”

5 It’s trying to break that cycle and give them an opportunity of work experience. Now, how exactly, practically, that might work and it might be that it’s a different scenario in a regional - or an area with high unemployment. We are blessed in regional areas where it doesn’t take as an hour to get to work, in most instances, so unlike a bigger city where it might take you an hour to get to work, and all that, and an hour to get home, five or 10 minutes is the usual, so it’s not totally onerous in that sense.

15 So I don’t know if that allows for some flexibility, but it perhaps is something that is worth considering. Again, I am just conscious that, for young people, we need to give them that exposure wherever we can.

**MR HARRIS:** I understand that. Then you have your general comment about compliance burdens.

20 **MS TETLOW:** Yes and, look, it’s very difficult. I understand where the Productivity Commission felt that it’s hard to actually quantify what that burden is, but I think there is a sense with the award structure and everything else that it is complex. and it does lead on to some of my other comments which is around how does business maintain their contemporary and current understanding of the workplace framework and ensure that they are doing the right thing? If there is some way of the communication, whether it is through 25 the chambers of commerce or whether it’s through other business mechanisms, I would encourage that that is considered for better communication.

30 Compliance burden, I suppose it would be good also - or addressing unnecessary compliance costs - if some reference could be made to any of the recommendations whether it’s actually adding additional compliance.

35 **MS SCOTT:** Were you here for Kathy’s presentation?

**MS TETLOW:** No, sorry. I came in in the last 15 minutes.

40 **MS SCOTT:** Okay, fair enough. Look, one of the things that Redline gave us some testimony on was their use of individual flexibility arrangements that could be done either as part of an award, there’s an allowance in the award that individual arrangement can be made with an employee to provide some flexibility, subject to a disadvantage test or you can have an EBA, and then as part of an EBA still have an individual flexibility arrangement where particular circumstances of a worker, in the interest of the employer, mean 45 that they can strike a separate arrangement, again subject to a no disadvantage test.

**MS TETLOW:** Yes.

5       **MS SCOTT:** And in the case of Redline, she was saying that - I think was informing us that a number of employees have such an arrangement for their - I'm going to describe it as a smoothing of their hours. Some people can work a 43-hour week and those hours are effectively banked for another time of year where there's not that much demand for the passenger services. So I hope I'm being clear.

10       **MS TETLOW:** Yes, that makes sense.

15       **MS SCOTT:** But we found, in our report, that very few employers seem to be aware of these individual flexibility arrangements. This, I think, comes to this issue that you make about better communications. I was just interested, how do you think your employers go about trying to achieve flexibility in the workplace? Do they primarily see it through EBAs or do they primarily see it through common-law contracts or have you heard of anyone using individual flexibility arrangements? Do you think your members are cognisant of these individual flexibility arrangements?

20       **MS TETLOW:** I haven't heard of a lot using them at all.

**MS SCOTT:** Right.

25       **MS TETLOW:** I've heard of the contractual arrangements, above-the-award requirements, depending on what the role is, and of course EBAs which are quite common. No, I haven't - the IFS-sort of scenario.

30       **MS SCOTT:** All right. The other thing I observed from your list of issues is that in some ways it's like what's not there is also important, and I can't see unfair dismissals as an area that's causing a lot of heartburn with your members. Is that a right interpretation?

35       **MS TETLOW:** Look, I've had some people sort of say the sort of comment around, well, that they're happy that they have to basically, come to an arrangement outside of the Fair Work Commission sort of hearing potentially, but it hasn't come through strongly at all, I would agree with you on that.

40       **MS SCOTT:** Yes. I notice in your earlier submission you had mentioned unfair dismissal and so on. We found it a challenging area to comment on for the draft report, to be fair, because you know it's hard to get a sense whether the concern reflects actual experiences of people with the system or whether it reflects what they've heard about the system and what they've read about the system and some of the high celebrity cases where things maybe haven't gone is expected.

45

**MS TETLOW:** Yes, true.

**MS SCOTT:** All right. Well, I might - - -

5     **MS TETLOW:** Yes. The reason I did not make any comment about that was because it - I don't have my own personal, sort of, element to add to it and the sort of substance that we included in the original submission - and I can't recall exactly what your request was around, but it was technical in nature and I thought - - -

10

**MR HARRIS:** Yes.

15     **MS SCOTT:** And would most of your members - you talked about their unfamiliarity with the system and the potential use of specialists to get advice.

**MS TETLOW:** Yes.

20     **MS SCOTT:** Could you talk about who those specialists are? Is it a solicitor? Are they going to the chamber itself? Do you have a hotline service? How do your members get advice - - -

**MS TETLOW:** Okay - - -

25     **MS SCOTT:** Are there consultants?

**MS TETLOW:** Yes, so - - -

30     **MS SCOTT:** What happens here in Tasmania?

**MS TETLOW:** Well, the Tasmanian Chamber of Commerce and Industry offer an IR phone service, which I think is provided through the New South Wales Chamber of Industry and Commerce.

35     **MS SCOTT:** Right.

40     **MS TETLOW:** I'm not a hundred per cent, but I think that's how it works. They also have IR consultants in Launceston, I think, in the Northwest and in Hobart. My chamber, we offer a consultant that works commercially and he offers sort of an introductory offer where if he's able to help our members out then he does so, for quick questions around award rates or, "Is this a public holiday rate," or whatever it might be. But yes, we ourselves, from my own organisation, we use the same IR consultant; he helps put contracts together, et cetera.

45

**MS SCOTT:** Right. Thank you.

**MR HARRIS:** I don't have anything else on yours. Is there something we have missed in asking question that you would like to emphasise?

5 **MS TETLOW:** No, I don't think so. I just think if we - if communication in some form or another could be considered at some point. I think people that work in this sector, whether they work at Fair Work Commission or wherever they work have an assumption around everybody else's knowledge, which I don't think is correct, and even from our submission you will note we were even conscious that some of the quotes, and they were quotes, weren't  
10 actually factually correct. I am aware that we got some media attention for that, that we put in a submission that wasn't actually factually correct, but it was actually on that basis that we put it in and included it, to show that these are the sort of issues that - you know, people's misinterpretations.

15 **MR HARRIS:** Well, perception is tremendously important. I think that was the source of our question about individual flexibility arrangements is the perception is that they are complicated and subject to review and easily cancelled, then taking them up is going to be discouraging if information and clarity are provided, particularly by the regulatory mechanisms, by the  
20 information provision from the Fair Work Commission and the Fair Work Ombudsman to show how these could be taken up, that's a different kind of approach. In our enterprise contract concept, for example, which we advance, that would effectively have in it a model where not just a business would find a way to vary - legally vary and still be compliant - an award, but  
25 where that's successful would actually be published on the website as a model that would enable others to copy it and so you would both increase compliance, and increase flexibility.

30 **MS TETLOW:** Yes, that's - - -

**MR HARRIS:** That's the sort of model that I think we had in mind for trying to expand the ways in which information could be provided by the regulatory authorities. So that would help with this compliance burden.

35 **MS TETLOW:** Yes.

**MR HARRIS:** In other words, if you can take down from a website a successful model for achieving this kind of roster shift, for example, in this kind of industry then all of those who are in that industry can achieve that  
40 roster shift and do it in a legally compliant form.

**MS TETLOW:** Yes, I think that would be excellent. Yes, case studies or actual models like that would work well in this - - -

45 **MR HARRIS:** Yes, and making it easier for that knowledge to be disseminated, because it's on the website.



**MS TETLOW:** Yes.

5 **MR HARRIS:** Rather than something where, as you say, you have got to go out and hire an industrial relations consultant, and in the end you're still left with uncertainty, "How will this be viewed by the regulators when I finally complete it and then submit it?" Some of these comments you've made and others have made on enterprise bargaining processes, for example, where form triumphs over substance, you get the discouragement effect again.

10 **MS TETLOW:** Yes, that's it.

15 **MS SCOTT:** Maree, is there any area of government, state or federal, or even an NGO that you think represents a good model of communication with your members? Do you think the Tax Office does a good job or do you think Launceston Council - is there one - is there an organisation that you think represents a high water mark in communications with a very diverse set of businesses?

20 **MS TETLOW:** The ATO have been active in the last, probably, six to 12 months on some current issues that needed to be addressed, but generally it's not - overall, whether - we have been working on a case study to do with planning and building regulation and I can assure you the same issues underpin that.

25 **MS SCOTT:** Yes.

30 **MS TETLOW:** Where the regulation is one thing, the perception is another and the perception is a whole lot more conservative on how to deal with the regulation. I think this is probably a similar scenario. So I don't think there's a positive case study in that regard, but I think it's something we should aim to - - -

**MR HARRIS:** Work a way out.

35 **MS TETLOW:** Yes, exactly.

**MS SCOTT:** Thank you very much coming today.

40 **MS TETLOW:** Thank you, my pleasure.

**MR HARRIS:** All right. I think we're going to have a short break for lunch. I'm not sure how long we've allowed to have a short break for lunch, but it must be short.

45 **MS SCOTT:** 1.30.

**MR HARRIS:** We will be back right on time then, to give everybody a chance to make comments. Thank you.

5        **LUNCHEON ADJOURNMENT** **[12.38 PM]**

**RESUMED** **[1.30 PM]**

10        **MR HARRIS:** I am going to resume the hearings now. For those who weren't here this morning, let me just briefly run through the nature of our process for everybody concerned. Participants, those who have registered inquiry, will be advised by email of the final release of this report. We're  
15        going to have our work completed by the end of November, but the final report will be released by the government. The government has up to 25 parliamentary sitting days to respond, so it is probable this report will come out early next year for public arrangement.

20        In terms of the hearing today, we are taking a full transcript. Participants are not required to take an oath, but should be truthful in their remarks. Participants are welcome to comment on not just their own submissions but anybody else's submission. There will be a transcript of today and transcript will be available on the Commission's website as soon as practicable, a  
25        couple of working days' time I should think. Submissions are also going to be available on the website.

While we do not permit video recordings or photographs to be taken during the proceedings, primarily for the disturbance that it causes, social  
30        media such as Facebook and Twitter may be updated throughout the day. We do ask that all members of the audience ensure that their mobile devices are switched to silent, and I should do mine too just in case. It's still on silent, that's good.

35        (Housekeeping matters)

Thank you very much. With our latest set of participants, would you guys like to identify yourselves for the record?

40        **MR WALSH:** Yes, I am Steve Walsh, Secretary of Unions, Tasmania.

**MR OSTLER :** I'm Andrew Ostler, ANMF, Tas branch, branch counsellor.

**MR MANN:** I'm Mark Mann. I'm delegate at Mondolez with the AMWU.

45        **MR GRIFFIN:** Paul Griffin, I'm secretary for the Shop Distributive and Allied Employees Association of Tasmania, thank you.

**MR BALL:** David Ball, disability support work with Anglicare Tas.

5 **MR COCKSHUTT:** My name is Josh Cockshutt, student at Claremont College and also an SDA member.

**MR HARRIS:** Thank you. Opening comments.

10 **MR WALSH:** Yes, I will make some opening comments if I may. In opening, I would certainly say that on behalf of Unions Tasmania, we will be supporting, obviously, the substantive response that the ACTU will be making in relation to the totality of the report. What I have done today is really keep our comments to those sections of the recommendations which we see directly impact on Tasmanian workers, and that is primarily around  
15 minimum wage, penalty rates and bargaining, including right of entry.

On the wages front, I think it is clearly acknowledged that in Tasmania wages are generally lower, particularly lower than the other parts of Australia and there's plenty of evidence to that effect, but just - and I think in our  
20 initial response submission to the Productivity Commission we identified that. But just to recap some of them, in November 2014 the average wage in Tasmania was assessed at being \$1261. Now that is 85.4 per cent of the national average. So as you can see, 16 per cent less in Tasmania is what workers are earning. Now, 56,000 workers, according to the ABS figures are  
25 reliant on the award rates, so that's where the impact of penalty rates et cetera comes - and minimum wages become very reliant for Tasmanian workers.

Now, on the penalty rates, so in relation to the minimum wage, we clearly see that any changes to the way in which the minimum wage is  
30 calculated will have a significant impact on Tasmanian workers. On the penalty rates, and it's not my intention to go into significant detail and research. I understand United Voice are meeting with you after our hearing, so it's not my intention to go into detail about the research which was commissioned by both United Voice and the SDA, but that will show that  
35 any impact or any changes to penalty rates will have a significant impact on Tasmanian workers, and all I can say without going into the minutiae of that research, it's estimated that anywhere between 12.6 million and 23.8 million would be taken out of the Southern Tasmania economy if there was partial changes to the way in which penalty rates are calculated.

40 So that's a significant impost both on the individual - on the workers - but it is also a significant impost on the economy which would certainly not assist in the objective of everyone of creating jobs in this state. We maintain, as we've said in our submission that reducing penalty rates or reducing wages  
45 and cutting cost in terms of penalty rates will not improve productivity, and we are strongly of the view that businesses in Tasmania will only reopen when there is a demand. It wouldn't matter how much you paid a worker in

some parts of Tasmania, they would not open on a Sunday, they would not open on a Saturday, because the demand is not there.

5        So in relation to the bargaining, one part which may be pleasing to the Commission is that we are not opposed to restricting the non-union bargaining agents your recommendations, but there is clearly - we do not support enterprise agreements not being able to restrict the terms of individual flexibility arrangements and we see that the impost that is proposed in relation to the way in which enterprise bargaining would be  
10        conducted will again severely inhibit the capacity to negotiate an outcome in the workplace that provides that win/win for everyone.

15        My only other remark, really, at this stage is in relation to the right of entry and the proposal that right of entry would be restricted to two occasions every 90 days where there is no collective agreement or where you are not bargaining, and for anyone who has been involved in developing an enterprise agreement in a workplace knows that that would severely impact on the capacity of the workers in that workplace to negotiate an enterprise agreement, to only have two visits every 90 days for discussion purposes by  
20        the relevant union.

25        I think my only other comment really is in terms that I am aware that the Launceston Chamber of Commerce were proposing that the minimum rates for - or the minimum hours for casuals be reduced from three hours to one hour. That totally ignores the impact that casual workers would experience, both in terms of all the costs associated with getting to and from work, parking, transport, petrol, if they are required to then have childcare, then if some of those workers were only earning 12 to 14 - \$16 an hour even, it would be a total waste of time for them to even contemplate coming to work  
30        for one hour.

35        Of course, that then places more pressure on the individual, because I could see this situation occurring where someone turns up for one hour, they are then asked, "Can you stay an extra one or two hours?" They say, "No, because my roster only said one hour and I've made arrangements." They will then be placed at further risk by being left of future rosters. So I think that is particularly onerous expectation from the employers, but I will add my comments.

40        **MR HARRIS:** Thank you. Do you other guys want to make general comments?

45        **MR WALSH:** There's probably two, with the indulgence of the Commission.

**MR HARRIS:** Yes.

**MR WALSH:** Two of them are required to be back at work - - -

5 **MR HARRIS:** Yes. You guys start as soon as you're right. I've got a couple of questions, but I will come back to them hopefully before you shoot through.

10 **MR BALL:** I've just got a comment around that my wage is made up by a large proportion, possibility one-third - I haven't really looked at it, but I know it's a high amount - of penalty rates and I don't understand how people can't see that my loss of wages will impact on not only me but so many other people would be in businesses around me and small business to larger business and it would just impact on the way I live my life, and I would be back to being in Struggle Street, and not work in the same job for 10 years to try and get somewhere, and it's just going to be taken off of me if I lose the penalty rates and back to the position of a really low wage.

20 I think it's quite insulting to the work that I do. It's not a job that everyone can do. It's in an intensive support area with people with disability. For instance, yesterday, I get to see on Facebook late last night about everyone who had gone out for Father's Day and done all these great and wonderful things, yet I didn't. I'm here at work, yet it's not valued that I'm at work with people that are vulnerable and I miss out on so many things. That's part of my job and I accept that, but I certainly want to be compensated in a way that's reasonable and penalty rates is that way, and it would just impact greatly on so many different areas around me. Like, those three or four coffees that I might have a week are gone.

30 So you don't have to worry about people are not going to be going there, because they won't have that money. The restaurants that I go to infrequently and all those sort - it's - - -

**MR HARRIS:** You have a different penalty rate for Sunday than Saturday in your agreement?

35 **MR BALL:** Yes.

**MR HARRIS:** I just wanted to clarify that.

40 **MR BALL:** Yes. I believe that should be so as well. I don't understand why one of those days would be different to the other day. I don't understand why afternoon shift isn't seen to be something that's - I work unsociable hours. I do sleepover where I am required to stay at these places overnight and so on.

45 **MR HARRIS:** The report actually supports the idea that there are penalty rates for working unsociable hours. Our difference of opinion is over the rate to be paid for certain hours and the Sunday versus Saturday, In fact, in the

report we comment quite a lot on particularly those who have to work long periods of overnight work and how low the penalty rate is for them by comparison to, for example, the Sunday rate.

5     **MR WALSH:** We acknowledge that, but I think it needs to be said that in terms of having a difference - or not having a difference between Saturday and Sunday is one which we would think it should still be kept, the difference, because clearly Sunday traditionally has been a family day, rather than simply another day of the week and I think that's why we still are of the  
10     view that the Sunday penalty ought to be retained.

**MR HARRIS:** I'm interested in this, because you're working on, I think you said the carer-based profession and some of the carer-based professions have an organised arrangement so that if you are working seven-day weeks, there  
15     are no variations in the penalty rates, there is an holistic arrangement. Not in your case obviously.

**MR BALL:** No, I'm not aware of that in other organisations - - -

20     **MR HARRIS:** I think it came up in Bendigo when we there - whenever it was - last week. No, that's all right, I was just asking for your particular circumstance.

**MR WALSH:** I think on that point there's a lot of agreements that we could point to, and in fact there - in previous lives, there are agreements that I've  
25     negotiated which recognise that in terms of - and that avoids the high pay/low pay arrangement, but at the end of the day, the value is exactly the same and that's one of the pluses of enterprise agreements. If you can negotiate that in a fair and proper way then that strengthens that flexibility.  
30

**MR HARRIS:** Yes, I think we understand each other. Somebody else also needed to take, just in case we didn't get time to go.

**MR COCKSHUTT:** I just wanted to comment on basically penalty rates and the important role they play in people's lives. Just generally, if we're  
35     going to take the penalty rates away from people it's going to lessen their income, whether it is fortnightly or monthly, and it's a flow-on effect to economics as well. When we are taking away people's income it affects what they can do.  
40

       Some people are already struggling to put food on the table for their families. And with these changes to penalty rates, if they do occur, it will even put more strenuous positions on these people. We might see people who cannot afford food for example, sometimes. They have to go without.  
45     Even if it's, like, going out to restaurants or whatever it is they have to cut back on all over the board. Education costs, all those sort of things flow in.

When we're taking away people's pay we are also hurting businesses (indistinct) businesses.

5 There was a very high statistic: people's pay, where they usually work with, they spend their income on. So we're not generating that revenue flow through the business world, so it's a bit of a bad situation for both people, but more for the families because their take-home pay is very important to them. Pay is a measure of what they can do, and they work very hard and unsociable hours, like late night shifts.

10 I actually work at KFC and I'm actually a grade 12 student, so balancing study and also doing work as well is really difficult, and then being compensated for working 5 to 10 or even getting out at 12 o'clock at night is really important, not only to myself and doing work and getting an income so  
15 I can afford petrol money to go to my studies at the uni, because I do a college program, travelling to and from work and all those sorts of things, and even helping my family out, because one of my parents does not work due a workplace injury - helping my family out, even if it's paying for the electricity or water or anything along those lines.

20 So I generally feel that if we do take away penalty rates, it's going to hurt the people who really earning it, and that's a position people with businesses or whoever needs to understand these are people's lives and they can go, "Oh, it's only a bit of money," but in the sense of that person and  
25 those individuals it can be the difference between what happens and what they can do.

**MR HARRIS:** Again, you have a different - you are working under an arrangement which has a different penalty rate on Sunday, a higher rate on  
30 Sunday than on Saturday?

**MR COCKSHUTT:** I have a fixed rate, so currently for casuals it is 23 per cent of the wage, as that's what we usually do and part-timers have a minimum of eight hours to 15 hours, and full-time obviously 38.  
35

**MR HARRIS:** So a little bit more like the arrangement I was asking about earlier.

**MR COCKSHUTT:** I think it's the same for each day, so on Sundays I do  
40 not receive any extra support.

**MR HARRIS:** I understand that. Can I ask a couple of specific questions right now? Steve, in relation to demand, you made the point that you don't think there will be any increase in the operating hours by businesses because  
45 demand won't shift. Tasmania is an economy that does depend to some degree on tourism and tourists traditionally do actually want to see additional services on Sundays. So tell me a little bit more about why you think

businesses, if they have gotten equalise rate between Saturdays and Sundays, won't actually operate any longer on Sundays.

5       **MR WALSH:** Well, I think primarily because how do you differentiate between one part of the economy that is required to work - Salamanca Place, for example, which is for anyone that visits that area on a Sunday, it's a thriving - you know, plenty of people about. And then somewhere else it might open at lunchtimes because there is a particular trade or there is something on, so those people then get disadvantaged, so you end up with a  
10       two-tiered wage system and I think that's the area that concerns the trade union movement about the potential of hospitality/retail being impacted more heavily than what other sectors of the community are.

15       I just think that that creates then that two-tier wage system, which anyone - and if you think back, a long time ago we had differentials between states. Tasmania, certainly in the printing industry, the one which I was familiar with, had a state differential compared to other parts. Now, that all went as part of the whole modernisation of awards et cetera. To go back to that, I think, would be a disaster.

20       I think that it's the age-old question about demand and while, you know, do these businesses who say, "We need to have cheaper rates on a Sunday so we can employ more people," then they're not prepared to work themselves. They are not prepared, as a business - many of these businesses are not  
25       prepared to work themselves on those particular days, yet they want people who are more vulnerable, more open to pressures - because if they don't work, they don't get us back, and that's the danger that we face in terms of having a two-tier wage system. It's that impact of those individuals who don't have any bargaining power already power in the workplace at all, that  
30       will be most affected.

35       **MR HARRIS:** There are, though, already quite a lot of different penalty rates between different awards and, therefore, different industries. Our report covers the quite substantial variations, even on Sunday rates, that do occur, but also between different kinds of work; between evening work and overnight work, in particular, at the penalty rates available for Saturday or Sundays. Do you not think that social attitudes to work have changed is the time those rates were set back 60 or 70 years ago in some cases?

40       **MR WALSH:** Social attitudes may have changed marginally, but at the end of the day people still regard and I do have the figures here somewhere, I think it was in my - in Unions Tas's original submission - but there is still a large percentage of the workforce that still work Monday to Friday.

45       **MR HARRIS:** Yes, that's correct.



5 **MR WALSH:** And I think the president of the ACTU made the point in one of the doorstops I saw that, "When they start playing the AFL Grand Final and the NRL Grand Final on a Tuesday night, then we will have a true 24/7 economy." We don't, and that's the reality at the present time that the vast majority of people still work Monday to Friday. And for those who are required - just because I happen to work in an industry that works Monday to Friday and I want to go out on a Sunday night to a restaurant, then why shouldn't I be expected to pay extra or why should someone who was serving me be treated as cannon fodder? I think that's the area that concerns us.

10 **MR HARRIS:** So one of our arguments in the report is those rates were originally set very high on Sundays as a deterrent to working on Sundays, so not as compensation for working antisocial hours but as a deterrent, and yet social attitudes have changed and we no longer want to deter work on  
15 Sundays. We still want to pay people for working antisocial hours, but we are proposing a different rate. This is the source of my question about have attitudes not changed from the time when we once set rates to deter work, whereas is now we're trying not to deter it.

20 **MR WALSH:** Yes, but we also had a situation where people weren't as exploited quite a readily as what they are these days and I think with the changes - we have an award system in those days which was reasonably inflexible. We've gone down the enterprise bargaining path, which has created the capacity for businesses to negotiate and enterprise agreement  
25 which meets the needs of their business and meets the needs of the workers.

As I said in my opening comments, there are plenty of examples where the industry is, if they sit down and have proper meaningful negotiations, that we can come out with outcomes which recognise that and there are plenty of  
30 examples around, and I think that there is a point in your recommendations about pattern bargaining. Currently pattern bargaining is outlawed.

Now, if we can reach agreement with the Chamber of Commerce or a group of companies then, yes, by all means let us sit down and negotiate an  
35 outcome, but we need other protections. I don't think we can simply remove one part without making sure that other parts of any agreement protect those people who are open for exploitation. That is why we would also oppose changes to the BOOT test.

40 I think that is an important element that does still protect those workers who, as I said, have no - a casual who was bought in for 20 hours a week and then is asked to stay on, in many cases, they are required to stay on and they don't even get that recognised if they've got to spend an extra 15 minutes, 20 minutes to finish a job. There's no protection for them.

45 **MR HARRIS:** I've just got one more on this question of penalty rates before we move on to some of the other ones. Our proposition as well is that

the penalty rates will finally be struck by the Fair Work Commission, so whilst we have gathered evidence that we think does support the idea that Saturday and Sunday are more like each other now than they might have been 30 years ago, let alone 60 or 70 years ago when rates were struck. Ultimately the decision will be in the hands of the Fair Work Commission. Did this not suggest to you that therefore there's a reasonable balance to still be available here? That that is, submissions will be heard from each of the industries and the Fair Work Commission will ultimately decide the matter?

**MR WALSH:** Yes, but again there's been numerous - and I can't recall the number of inquiries or submissions that have been sought in relation to the Fair Work Commission, and in all the decisions to date they've rejected any move to change the way in which the penalty rate system works. So I think in terms of that we have had plenty of examples, and it is open to employers to continue to raise that in the confines of the Fair Work Commission and we would obviously be making submissions contrary.

**MR HARRIS:** I will just need to do a supplementary to be clear on that. I had taken from your earlier comments that you might been open to these things being discussed in enterprise bargains between individual firms and their workplace representatives and I was really asking the question - or the Fair Work Commission. Do you have a preference one way or the other on penalty rates or is it just generically you are just concerned?

**MR WALSH:** Well, we are concerned, one, but where there is a - and certainly from the Trade Union's point of view, where we have negotiated different penalty rates, that's been as a result of the workers on the job being organised and looking at the total picture. I think the danger again is if it was simply left to the Fair Work Commission, then we could potentially end up with a blanket right across the board, and that would then remove the intention of enterprise agreement.

**MR HARRIS:** I see. That's fair enough. Can I clarify for you something about the right of entry point that you have made? So our draft recommendation on right of entry relates to unions that do not have members at the workplace, therefore it is not in relation to the negotiation of that enterprise agreement. In fact, it's quite clear, ... are not currently negotiating an agreement. So our limitation on right of entry in recommendation 19.8 says

*The Australian government should amend the Fair Work Act so that unions that do not have members employed at the workplace and are not covered by or are not currently negotiating an agreement with those would only have right of entry for discussion purposes for up to two occasions every 90 days.*

5 The sourcing of this recommendation was to circumstances where, effectively, unions are competing in the workplace for right of coverage and there is a lot of disturbance. We are saying, well, the union that is incumbent should be the party doing the negotiating. The union that is seeking to take overrepresentation, they should be limited in the circumstances to not disturbing the workplace more often than, say, twice in 90 days.

10 There is no brilliant science, I might say, behind “twice in 90 days” and part of the purpose of having hearings like this is to hear perhaps that number is too restrictive, but in terms of your comments, I just needed to clarify for you we’re not trying to prevent unions who are negotiating an agreement and therefore have incumbents or rights, from being able to enter.

15 **MR WALSH:** No, I understood that, but I do make the point, with the greatest of respect to the Commission, what that does is put a fetter - a restriction - on a union that has coverage, but doesn’t have members, in terms of being able to regularly visit that place for the purposes of negotiating an agreement. There may be an unintended consequence of your recommendation - - -

20 **MR HARRIS:** Could we move off agreements then and just do, say, safety, which might be easier. I’m asking this to clarify your position. Are you saying that the restriction for a union that does not have members and is not negotiating an agreement, is still a limitation on them, for example, looking at a safety issue? If so, I can’t quite see how that could be preventing a union from entering if they haven’t got any members. Are you saying they have coverage, but they have no members?

30 **MR WALSH:** Yes, they have coverage and there are - - -

35 **MR HARRIS:** Can we use safety rather than agreements, because we’re pretty clear-cut. We’re not trying to stop unions being involved in negotiating agreements, but I’m trying to pick up an issue based kind of problem and work out how it is that a union that has coverage but no members could need to be involved in a workplace.

40 **MR WALSH:** Well, it’s that same old - again having experienced it - and I won’t identify the workplaces, obviously, but I’ve had many instances where there has been a reluctance of workers to negotiate an agreement based upon their work situation, based upon the way in which they’ve been treated. They want to join a union, but are reluctant to join a union, so there is - - -

**MR HARRIS:** Or afraid to join a union. Would that be right?

45 **MR WALSH:** That’s always an outcome and so for us to negotiate an agreement in that particular workplace or seek to establish an agreement in that workplace - for us to be restricted to two visits every 90 days is just - you

would never get around a 24-hour operation to get around three shifts or two shifts even if they worked 12-hour shifts. You would require more than two visits. I just think it is an unnecessary restriction.

5           There are plenty of restrictions already in relation to the right of entry and I think this is just another one which, as I said, with the greatest of respect - when I first read that, it seemed to me that it was designed to further restrict the capacity of trade union to recruit workers in the workplace.

10       **MR HARRIS:** The driver for us was incidents drawn to our attention where there were unions competing in the workplace and creating a disturbance. A significant disturbance in some circumstances.

15       **MR WALSH:** I think the history in Tasmania shows that certainly in recent times, and I'm talking about the last 10 to 15 years, the number of demarcation disputes would be negligible. In fact I can't recall any particular circumstances in Tasmania.

20       **MR HARRIS:** Okay. One-hour shifts. The Launceston chamber did clarify for us this morning their intention in talking about one-hour shifts was in relation to the three-hour minimum shift arrangement that had drawn some controversy in the relatively recent past. They were talking about it in the context of junior workers or workers working on youth wage kind of arrangements. Does that alter your opinion of the proposition?

25       **MR WALSH:** The short answer is no. I think the fact that they are even contemplating bringing down the three-hour minimum for even a student - and maybe Josh might like to comment, but I think - or Paul - in terms of some of the agreements in those areas, I think to bring - again it changes the balance or further restricts capacity for any worker to have a meaningful input into their conditions. It's just open to exploitation in my view.

35       To bring someone in for one hour between 5.00 and 6.00 on a Friday night or a Saturday night because that's when the football will be out and we've got a takeaway right near there, would just severely impact - what safeguards are there for that to be avoided? It is really something that I think is just nonsense from the Chamber of Commerce's point of view. I know that it wasn't - I didn't see it in any of your - - -

40       **MR HARRIS:** No.

**MR WALSH:** But I just think it defies belief to be quite honest.

45       **MR HARRIS:** Part of the argument appeared to be that it would give work opportunities to people who might otherwise not get them. Again, we're talking junior wage rate kind of things here. Do you feel there is no value in that?

5       **MR WALSH:** Again, the experience I had with most businesses is if they need three workers, they will employ three workers. They won't employ four workers because all of a sudden they have to pay for one hour. They won't employ four. They will still only employ three. That was the point I was trying to make in relation to the impact on productivity.

**MR HARRIS:** Right.

10       **MR WALSH:** Lower wages will not improve productivity. It will improve profitability and the bottom line of the company will improve, but it won't improve productivity. If I don't need to employ five people, I'm not going to employ five people.

15       **MR BALL:** I will have to excuse myself.

**MR HARRIS:** Sure.

20       **MR COCKSHUTT:** Could I also speak on that?

**MR HARRIS:** Sure. This is a hearing. It's your chance to speak.

25       **MR BALL:** Yes, coming from my workplace, we do have a minimum of three-hour shifts for all employees except new trainees, which is a bit higher in a six-month frame than having a minimum of two hours. What I can say is even with a three-hour shift, it is really hard to get the training under way in terms of trainees and even normal - like, our members who have been fully trained still find on their roster though they only get three hour a week and that's the sad part.

30               As my boss says, "I'd like to give them more hours," but because we've got all these different team members, you can't split the shifts like that. If we're going to give people one-hour shifts, then what is the point? By the time they pay the petrol to get there if they're travelling by car or paying their  
35       bus fee and if they're getting like \$7 or \$14, that's probably their shift gone or half their shift gone. That could lead to exploitation of workers and everything like that.

40               If businesses are going to start giving one-hour shifts to people who have just been employed and starting to learn things, well, there's not much you can learn in one hour over a space of weeks. Are they going to give, like, five one-hour shifts, Monday, Tuesday, Wednesday, Thursday, whatever? That could lead to that because there is no - unless there were safeguards.

45       **MR HARRIS:** So your proposition really is around the training of people and their ability to - - -

5       **MR COCKSHUTT:** The training of people and also generally one-hour shifts, by the time the worker has arrived at the workplace and made their way back home if they're travelling by car or using public transport, it's really going to dent what their rate of pay is. If they get \$14 and it takes \$7 of petrol for wherever they come from, then effectively they're getting \$7 an hour. That's another element we need to look at in terms of how that could affect people.

10       **MR HARRIS:** Travel time. Okay. Thank you. I'm just going to check the rest of your - sorry, I've written notes all over the top of this. I'm just trying to check here. You make a point about the Fair Work Ombudsman needing adequate resources. Is it your view that at the moment the FWA doesn't have sufficient resourcing?

15       **MR WALSH:** In our original submission, we did make that point. We would still hold to that. I think particularly when we see the amount of underpayments which have been pursued here in Tasmania and being able to ring up and get proper advice in terms of the wages that are expected to be paid, the appropriate award coverage, et cetera, which is unfortunately a  
20       common trait of many government departments, that with cutbacks the pressure is going on the individuals in those departments and the amount of queries being able to be answered is just blowing out.

25       I think, yes, if we're going to have the Fair Work Ombudsman, then it needs to be properly resourced to make sure that it does meet its requirements under the Act.

**MR HARRIS:** I think that's all I had out of your submission.

30       **MS SCOTT:** I'd be interested in your views about our recommendation that governments look into apprenticeship arrangements and consider whether there is merit in having a look at the incentives and penalty arrangements that currently apply. Does Unions Tasmania have a view about the  
35       apprenticeship arrangements and the need for there to be a broad based inquiry?

**MR WALSH:** Well, we would support the need to have a look at the way in which the whole training system operates. I think one of our concerns about the wages that are paid in relation to apprenticeships, they have not moved  
40       significantly in the last four years. I do often use myself as an example. I was an apprentice many years ago, but when I started my apprenticeship at the age of 15, it was a lot different getting 48 per cent of the adult rate then than what it is now when you're an apprentice. In many cases you're starting at 18. You are far more work ready these days than what you were when I  
45       started work.

I think the fact that we're now only around 52, 53 per cent of the adult rate or of the trade rate, then that doesn't recognise the way in which the apprenticeship system has changed. I think we would certainly see the need for an examination of the way training is undertaken and the way in which apprentices are paid. There have been recent examples here in Tasmania of - the favourite catchcry particularly in the building industry is, "Oh, apprenticeship wages are still too high. We won't employ apprentices." We need to look at maybe the red tape around - I haven't employed an apprentice, so I don't know what is involved, but in that direct employment of an apprentice.

Things like training, it's important that apprentices are trained for the industry and not trained for an enterprise. That's the big concern that the union movement generally has; that training these days is being restricted to an enterprise rather than training across the industry. Of course that comes back to cutbacks. We touched on that earlier in terms of government departments, the impact on TAFE. The way in which TAFE's funding has been cut impacts on training and it's particularly relevant here in Tasmania because we don't have the numbers of apprentices that justify expenditure and providing proper facilities for training. That's a real challenge for Tasmania.

**MS SCOTT:** On a completely different topic, exploitation of migrant workers has been highlighted recently and our draft report did comment on the possibility of the need for higher penalties in some cases. From Unions Tasmania's perspective have you had instances of migrant workers being exploited in particular industries? Could you comment on that broad topic and your attitude to it or your views about what remedies should be applied?

**MR WALSH:** I think in terms of the exploitation of those workers, yes, there have been examples here in Tasmania, particularly on the north-west coast amongst the seasonal workers in relation to the broad agriculture industry.

**MS SCOTT:** Horticulture?

**MR WALSH:** Horticulture, yes. Small berries, fruit, that seasonal work. Anecdotally, I've known of people who have contacted my office about the exploitation on that area; underpayment of wages, the general thing. They are transient workers. Things like superannuation haven't been paid, those sorts of things. Yes, look, in terms of the remedies, we wouldn't be opposed to increase penalties for that sort of breaches.

We know of overcrowding in terms of accommodation and that comes back to the point about the resources that the ombudsman has in terms of being able to check those out. Many workers who have just come along, they raise these issues with us but their next phase of their holiday is somewhere

else - or their work holiday - and so they're bringing to our attention that they're not around to help remedy it.

**MS SCOTT:** Thank you.

5

**MR HARRIS:** Fair enough. We heard this morning just in relation to this question about apprentices and certificate trainees - we heard this morning about certificate trainees coming out of high school with certificate I or II in - I would guess this is hospitality, but it may be in relation to another field.

10

**MS SCOTT:** Retail, for example.

**MR HARRIS:** Retail, and being uncompetitive as new entrants into the employment market because the certificate required them to be paid at a higher level than someone who was exactly the same age and didn't have a certificate. Is this, in your view, a notable issue? This links to our draft recommendation to say it's not just the apprenticeship system that should be looked at, it's the certificate system, as well, and whether or not there is a breakdown now occurring between gaining a qualification and your employability as a consequence of that.

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20

**MR WALSH:** Well, again, I think generally it just raises that whole issue about from an employer point of view, "We just want to reduce costs. We want to reduce wages, labour costs, and we're really not interested about people being more skilled, more competent and being able to be more work ready. Because someone comes into the workforce with a certificate I or a certificate II which then deals with a lot of the issues which they don't have to be trained on, whether it's work systems, whether it's flows, whether it's health and safety, no, we just want to employ people at the cheapest possible rate." That would be my concern in relation to that particular issue.

25

30

**MR HARRIS:** Okay. Just for me to be clear, because we're going to look at this a bit further, I think, this whole question of is the certificate training system working, this would not be about simple cost reductions kind of activity. This would be is there a qualification-related barrier emerging and, just to get it clear on the record, your view is probably not. Your view is that you haven't heard of this kind of thing in a serious way.

35

**MR WALSH:** No, I haven't heard of it. If that is an issue - my involvement in previous days was around traineeships and training generally. It was more than welcome, because all of a sudden someone is far more work ready.

40

**MR HARRIS:** Historically that has been the case.

45

**MR WALSH:** Yes.



5       **MR HARRIS:** That is what has been suggested, but the question here is has it gone in such a way that it might provide a disincentive. Anyway, it was good to get your feedback on that. Do you have anything else? What haven't we asked you that you'd like to get onto the record at this point? The tape is rolling.

**MR WALSH:** I think I'm just about exhausted.

10       **MR MANN:** I've got a different slant on things a little bit.

**MR HARRIS:** Sure.

15       **MR MANN:** I work at Mondelez and, I'll be honest with you, it's a fantastic place to work for and I'm very happy to work there. We have got an EBA and we negotiated it fantastically, but there is one thing about penalty rates at Mondelez; it reflects that we are their assets and they acknowledge that. They always tell us that, so they pay us appropriately and they're quite proud to say that. I've been there 30 years and a lot of the guys in my area have been there 30-plus, so I'm one of the younger ones.

20       The fact of the matter is there, like, I'm rostered on to work Christmas Day this year and I've been rostered on many times when working, and it's part of my roster. I accept that. In the year 2000, I worked night shift and I watched everyone else - I looked out the window and was watching the  
25       fireworks and stuff, but there was something I sort of mentioned to people that people don't realise; when you're working unsociable hours, you get to miss out on - I can't play football because I work two days, two nights, four days off, two days, two nights, four days off, so I work weekends, I work weekdays and it rotates. You can't play footy. I tried, but I just couldn't do  
30       it. I could play, it's just because I couldn't.

**MR HARRIS:** Yes.

35       **MR MANN:** And I couldn't play cricket, which is one of my favourite sports of all. Also when my daughter was born - I still remember it - my wife - I was working Christmas Day and her first Christmas I actually rang her up at 8 o'clock in the morning and I actually listened to her opening her presents. That's how I got to see my daughter. Then later on we actually spent a lot of money and I bought a video camera at that time and I actually  
40       watched her. I worked from 7.00 in the morning until 7.00 at night and I actually watched her open her presents, so I got the feel of her excitement on the phone, but it certainly doesn't make it any better.

45       With that, also it's part of my roster and my wife accepts that, but if it was negotiated and we lost our penalty rates - I've never told anyone how much I earn, but I would lose \$40,000. If I lost my penalty rates, I would - I

normally say a per cent, but I will tell you I will lose \$40,000. That's above my base rate. Basically, yes, there goes the house.

5       **MR HARRIS:** But you do know that it's not our proposition to take away penalty rates.

**MR MANN:** No, but I'm just sort of explaining how we feel about penalty rates and how my family does.

10       **MR HARRIS:** Sure. Noting the significance that there's a compensation effectively for loss of quite important social activities.

15       **MR MANN:** That's right. That goes for other people, whether it be in retail, whether it be anywhere else. It's the same feeling. I'm pretty certain there are some young kids - my son is one. He is in grade 10. He is actually working at Woolworths. He loves it. He loves it there. He really does. He picks up a bit of part-time work after school and luckily it's - we've got to drive there, but if it was only an hour's work, by the time we drive there - I live a long way away from where he works. It's quite - there goes the money, so - - -

20       **MR HARRIS:** Yes. I thank everybody for making your contributions here today.

25       **MR GRIFFIN:** Can I just say something, please, in respect of - - -

**MR HARRIS:** Yes, sure. Jump in. Just let me check. Have we got United Voice here ready to go? Yes, they're ready to go as soon as you're done.

30       **MR GRIFFIN:** Okay. I'm speaking in respect of retail and fast food employees. In particular with retail and through EBAs which has been structured over a period of time, in order to retain people's income in both retail and in fast foods, they are in the lowest echelon, shall we say, of the wages scale and a lot of our employees, members, work from week to week.

35               A lot of that has come about because they have an expectation of a roster and it has come about through the deregulation of shop trading hours. Therefore, they work over into the weekends and with that the penalty rates that have - they are not anything new. They have always been there and they have continued to operate with that expectation of the week that they have and with that expectation of the income. They budget on that income.

40               In other forums similar to this, there have been employees that have made submissions to say that if their rates paid are reduced, they would not be able to operate in the way they do. They talked about things like - it might be the kids' basketball fees for the weekend. They say we may not get any luxuries - not that we have luxuries - and luxuries is to actually go to Macca's

once a week or something. That's how they budget. It's important to remember that in all of this scenario.

5 A lot of these people, they are part-time workers and not only because that's what they choose to, there is that part out there where we have this economy area, shall we say, of under-employed, so it's important that they have a particular roster that goes into weekends that gives them this - well, it's not additional or extra money. It's what they are accustomed to. It's their expectation and what they budget upon.

10 Josh talks about the three-hour minimum in respect of training and those things. It goes further than that and it just harks back to where I'm saying that if you have people who get awards changed or agreements changed where there is a minimum of one hour, certainly we're going to hit that under-employed more so. Much more so. It's important to understand that people in these low echelons of income, they budget not for just every dollar, but even 50 cents or every 20 cents, and they have children who are out there and that's where their incomes budget around with education and those things.

20 **MR HARRIS:** Do you want to make some comments - - -

**MR OSTLER:** Yes, I'd just like to make some comments. EBAs and awards. I think although you mentioned Sunday pay was to be a disincentive all those years ago, there is a here and now picture. I know with our union 25 when we negotiate an EBA, we sit down and everything is put on the table from both sides. What's important to members is taken forward and of course our members, too, have a certain pay expectation. They have certain wants and we listen to them, and we deal with that.

30 Penalty rates in general. I've been a shift worker since 17, I think, and now I have a son who is a shift worker, as well, who has just got a building apprenticeship. You see the kind of problems that arise from doing shift work. As a younger person you're missing your sport, you can't do your 35 cross-country. You certainly can't play team sport because you can't get to training or you can't get to the game. I think that's as a younger person. When you have a family, just to kind of reiterate, you miss all these things. You miss usually the footy on the Sunday these days and the soccer on the Saturday. You're missing things all the time and family events.

40 I think in general there needs to be some kind of - we need to maintain penalty rates for those shifts, both Saturday and Sunday. If there is to be adjustments, I think it should always be through the EBA process to make things fair.

45

**MR HARRIS:** I appreciate your point. Thanks very much. We appreciate Unions Tasmania coming along today. Can we swap to United Voice. Could you guys identify yourselves for the record, please.

5     **MS ARMSTRONG:** Certainly. My name is Jannette Armstrong. I'm the secretary of United Voice Tasmania.

10     **MS RICHARDSON:** I'm Lititia Richardson. I'm a member of United Voice.

10     **MR HARRIS:** Thanks for coming along today. Do you want to do some broad opening comments?

15     **MS ARMSTRONG:** Yes.

15     **MR HARRIS:** Okay. Go for it.

20     **MS ARMSTRONG:** Thank you for having us here today. We were really keen to give our evidence and our testimony at this hearing in concert with the national submission that will be made by United Voice. United Voice Tas branch has concerns about the draft report thus far, in that it's potentially a formula for lowering the standard of living for millions of Australian workers.

25             Our key areas of concern are the recommendations around penalty rates, restricting the minimum wage increases and recommendations that further restrict the union right of entry, protected industrial action and expanding the role of individual agreements. Similar to the Unions Tasmania delegation, we take particular umbrage to the suggestion by the LCCI that one-hour minimum shifts should be allowed. I think that's absolutely nonsensical and unacceptable to our members.

35             Where we do agree with the Productivity Commission is that I do think our industrial system in many ways is broken and dated. It doesn't deal with the new realities of work. It doesn't handle the modern complexities of the employment relationship these days. It doesn't truly allow workers to organise and to regain some power in that balance between the worker and the employers.

40             Many of the repairs suggested by the Commission in the draft report are largely of favour of the employers and we would argue that the answer is actually not to further impede unions and weaken unions, and reduce workers' rights and entitlements, in fact it's the opposite, because we know that here in Australia and across the world that organised workers and strong unions actually mean greater prosperity and greater income equality

45             across the nation and that's what we would like to see in the final recommendations of the PCI report.

5 So for many United Voice workers there are really practical challenges to joining their union and issues like employer intimidation, inadequate union access in the worksites and small workplaces and rotating shifts made that even harder. So restricting union access would further exacerbate that problem and if they do manage to join then becoming an active and effective union delegate can be and is discouraged in, really, many different ways by the employers. So we would want to see that discouraged.

10 In regards to the penalty rates being our other key issues, I would just like to say first off that it is really a vital part of people's pay. The majority of United Voice members receive penalty rates in some way shape of form and they rely on that to make ends meet, so any change to the penalty rates would essentially equate to a sudden cut in the wages for our member and our  
15 workers that would have a big impact our members, but also on the Tasmanian economy.

20 We have been doing with some research with the SDA and with the McKellar Institute on the impact of that particularly here is Southern Tasmania which I am happy to share with you, if you like. But I will hand over to Lititia who is with me today. Lititia is one of our members and she's here to tell a bit more about her personal situation and some of the examples about how these recommendations will affect workers and families just like Lititia.

25 **MS RICHARDSON:** Hi, I work as a first cook cafe attendant. I am a sole parent. The penalties to me mean so much because I am on a very strict budget. My daughter likes to ballroom dance and because I work and earn these penalties, it allows her to have a lesson a week. She also likes to play  
30 netball. It allows her to pay netball. If I don't get the penalties, I have to say, "No, you can't do it." I work for minimum wage, so of course the penalties mean huge amounts of money for me if I work on - - -

35 **MR HARRIS:** Can I just clarify the minimum wage? You work a minimum wage as a chef.

**MS RICHARDSON:** No, not as a chef. I only get paid as a cafe attendant, but I do breakfast cooking as well. So, like, I'm on - - -

40 **MR HARRIS:** Right. Sorry, I misunderstood.

45 **MS RICHARDSON:** I've worked unsocial hours all my life, but now I miss things like her dance recitals, her netball finals and the penalty money doesn't make up for it, but it's the penalty money that allows her to do it. So to take it away from somebody like me, it just impacts so much, just not on me but on my daughter.

**MS SCOTT:** So you are working Sundays now, Lititia?

**MS RICHARDSON:** I don't work Sundays, I work very early of a morning, so I start work, like, 4 o'clock of a morning and I do do some Saturdays.

5

**MS SCOTT:** Okay, but our draft report was about the Sunday rate being equal to the Saturday rate, so that wouldn't actually affect you, would that be right?

10 **MS RICHARDSON:** It doesn't affect me, but if we were to open on Sundays it would.

**MS SCOTT:** I understand.

15 **MR HARRIS:** I see.

**MS ARMSTRONG:** I think Lititia is an example of many of our members who do in fact work Sundays, but can't be here today and - - -

20 **MR HARRIS:** No, we're not saying there is no-one, we're just clarifying the presentations that's all, because the record - as we say it will be up on the website and lots of other people will read the record as well. Now, I under from Unions Tasmania just earlier and I think you were here, that you and the McKellar Institute had done some estimations of the reduction in value to the  
25 Tasmanian economy, is that right?

**MS ARMSTRONG:** Yes.

30 **MR HARRIS:** That's the proposition that we put forward, the Sunday rate becomes roughly the Saturday rate.

**MS ARMSTRONG:** So what I have got available to me today is some research into what a full-cut to penalty rates would look like and also what a partial cut to penalty rates would look like. So this was done before the  
35 initial - before the draft recommendations were made about Sundays.

**MR HARRIS:** We were hoping you identified members who were actually doing this, because as you probably know from our draft report, the data is - well, it' - you might be in a better position to have estimates of numbers of  
40 members who are primarily working Sundays than the published data. One of the things we always try and do at these hearings is to ask people, "If you've got a data source, we'd really like to have it, because the one thing we value above everything else in putting out the final report is 'Here's some data on which people can objectively argue rather than subjectively argue.'"“  
45

**MS ARMSTRONG:** No, I don't have - - -

**MR HARRIS:** So anyway that was my - and I'm doing my ad here as well, as you've probably noticed. My ad is for additional information if anybody has got any.

5     **MS ARMSTRONG:** I don't particular information about how many of our members do work Sundays, but the research that I'm seeing might be similar to what you've seen and that's the number of 10 per cent of Australians working Sundays, which isn't a large number and goes against the suggestion that we're working in a 24/7 economy.

10

**MR HARRIS:** You can make the argument both ways, but I was just really trying to get the data source. But, anyway, please go on. Sorry, I've diverted.

15     **MS ARMSTRONG:** No, we had done our finishing statements, so if there's questions - - -

20     **MR HARRIS:** Can I ask about the minimum wage? So our proposition in this report has been variously criticised for not reducing the minimum wage and, in your case, criticised for reducing the minimum wage. So can you tell us how you came to the conclusion that we were reducing the minimum wage?

25     **MS ARMSTRONG:** My understanding of what I've read from the draft recommendations so far is that what has been proposed would likely lead to lower increases in the minimum wage, so that you - the minimum wage wouldn't keep up, in real dollar terms and relative to the average wages, and I understand that there's also some allowances in there for temporary reductions or even delays in minimum wage increases in some industries. So that's pretty concerning for us.

30     **MR HARRIS:** I think the proposition in relation to the latter was to enable the Fair Work Commission to consider that, because it wasn't clear that they had the power to consider such arrangements. It wasn't that they should  
35     implement such arrangements. In the case of the earlier part of your comments, the proposition is that the Fair Work Commission should give additional weight, particularly in circumstances of economic downturn, to the interest of the unemployed who might otherwise have prospect for a job. The  
40     proposition about how the rate would actually be struck and whether or not it's a reduction, it wouldn't be known until the work had been actually done by the Fair Work Commission in considering, in particular, the plight of the unemployed as well as the employed.

45     I guess what we are trying to point out is the Fair Work Commission regularly receives advice from the representatives of the employed and the employers, it is a very limited role in front of the Fair Work Commission for those representing the unemployed, and we think there should be a greater

5 level of attention given by the Fair Work Commission to the position of the unemployed and clearly that would be probably of greater significance in circumstances where the economy wasn't booming, but it's perhaps not as direct a proposition as might have been suggested, certainly in some media comments.

10 The other reason I wanted to ask you about that though is because United Voice does deal with people who are in and out of the workforce quite a lot, is this an area that you have given consideration to in the past? Is there any information that you might actually have on this? This is the position of the unemployed in overall consideration of setting a minimum wage.

15 **MS ARMSTRONG:** I don't have anything with me today, no, to add to that but it is potentially something that we can - - -

20 **MR HARRIS:** If there was something. Again, this is an ad as much as anything for everybody else who reads the transcript as it is for you, but we are very interested in this question and we've put out the comments in the way we have in the draft report in order that some people who might have better information again than we do on this might actually give us further submissions. So I'm putting that on the record so that it can be read by others as well.

25 **MS ARMSTRONG:** Yes. My initial reaction would be to - I'm not sure about the economics of cutting the disposable incomes of people who are already working, and most of our members on the minimum wage are largely underemployed already and so reducing their wages to supposedly help out other people who are fully unemployed, it doesn't necessarily seem to make logical sense to me, on the face of it, but I will pass on that call for further information about unemployed impacts.

30 **MS SCOTT:** I think the characterisation of cutting disposable income might not really reflect the words in the recommendations either, so you might want to have a look back at the specific wording in the recommendations.

35 **MR HARRIS:** Yes. Now, you also mention right of entry. So I tried to clarify a little earlier that our recommendation on right of entry is in relation to unions that are not represented on the site and has been drawn from problems that have occurred, although as Unions Tasmania were saying, that they have not had very many examples of such activity here in Tasmania, but the proposition was designed to restrict entry to unions that do not have members in the workplace and are not covered by or currently negotiating an agreement in the workplace. Does that alter your opinion at all of the recommendation?

45 **MS ARMSTRONG:** Absolutely not, given the fact that the large majority of workers in our areas actually don't fall under EBAs and in a lot of cases



working for very small businesses and on the award there is not a lot of potential for them to be covered by EBAs or not a lot of appetite. So we need to go into workplaces all the time to talk to workers about a whole host of issues outside of negotiating EBAs, so that would be really problematic for us and really detrimental to the workers out there who already have issues with accessing their union and getting the right information, and clearly understanding their rights and their responsibilities in the workplace.

**MR HARRIS:** I'm just trying to think through that in terms of the recommendations. Just give me a second. No, I think that was really what I was trying to ask a little earlier as well, so I understand the point. Individual agreements; you are concerned about individual agreements. Which of our recommendations, in your view, was giving rise to this concern about individual agreements?

**MS ARMSTRONG:** I don't have the numbers in front of me, I'm sorry.

**MR HARRIS:** Just the generic concept.

**MS ARMSTRONG:** I've just got a summary of what my feelings were. My understanding is that there are some recommendations in there that would encourage a greater use of individual agreements, so an expanded role for individual agreements.

**MR HARRIS:** Okay.

**MS ARMSTRONG:** In regards to the enterprise contract.

**MR HARRIS:** We have three recommendations for individual arrangements. The first is that there should be no restrictions on employers and employees entering into individual agreements created by writing down as it were or reducing the scope of the matters that are allowed in statute via an enterprise bargain, for example. The second is that we would use the no-disadvantage test, rather than the BOOT and the third is better information packages for employers and employees about what is available to them under the statute to negotiate individual flexibility arrangements. So I am assuming that you wouldn't be opposed to better information, so it must be either the move from the BOOT to the NDT, or the fact that there should not be in enterprise bargains the ability to write down or limit the utilisation of the currently allowed statutory arrangements for individual flexibility arrangements.

**MS ARMSTRONG:** Yes.

**MR HARRIS:** It would be those two?

**MS ARMSTRONG:** Yes.

5       **MR HARRIS:** It's good to get specificity on the record. That's the other thing we're out here to do. It might have sounded like I was leading you, I wasn't intending to, I just needed to get you to say this one bothers us, at least, so we're clear about what was behind your - - -

**MS ARMSTRONG:** Yes.

10       **MR HARRIS:** If you've got any other supplementary comments about why you might have a problem with - - -

15       **MS ARMSTRONG:** Well, I think changing from the better off overall test to the no-disadvantage test is clearly in favour of the employer rather than the employee and we already see a lot of issues with individual contracts and individual agreements, and workers being taken advantage of through those individual agreements. Often they are offered to workers on, essentially, a take it or leave it basis, "This job is yours if you sign this individual agreement."

20               And that leads to a lot of exploitation of workers, particularly in this time where we see a lot of under employment and where people are a lot more desperate to hold onto their jobs. They don't have genuine choice, particularly workers in our union who are scraping by on minimum wages and not necessarily full-time jobs. It would be a great impediment to the  
25       small bit of power that they have.

30       **MR HARRIS:** You said earlier that there weren't many enterprise agreements in the industries that United Voice covers. Would that be enough of a basis for me to ask you a question then about whether it would really bother you if enterprise agreements weren't able to restrict individual agreements? If you don't have many enterprise agreements it seems - - -

**MS ARMSTRONG:** We have enough.

35       **MR HARRIS:** You have some.

**MS ARMSTRONG:** Yes.

40       **MR HARRIS:** No, I wasn't being cute there, I just needed to know was it genuinely still a problem. I don't have any other questions.

45       **MS SCOTT:** Janette, could I ask you about migrant workers in your sector and recent commentary highlighting potential exploitation of migrant workers in various sectors. Unions Tasmania referred, I think, to the agricultural sector, but I'm interested also if you have had any issues in relation to it and whether you can comment more broadly. We have raised this as an area of concern in our draft report but that it hasn't got the coverage

that we might have hoped it would have, so is that something you would be able to comment on today? Not so much our recommendations but just the position of migrant workers in your sector more generally.

5     **MS ARMSTRONG:** I can a little bit, it's something that we see as an issue in hospitality for us, particularly with cooks and restaurant staff. So we unfortunately do see it far too often and pretty significant impacts on those migrant workers who feel like, again, that they don't have a choice; that if they don't agree to some pretty substandard and sometimes inhumane  
10     working conditions that they will then lose their job or lose their visa and be sent home.

**MS SCOTT:** These are people on 457s, brought out as - - -

15     **MS ARMSTRONG:** Largely, yes.

**MS SCOTT:** As cooks and chefs to get out here. Could you tell me what contacts you have had or how you would have contact or how you would learn about their circumstances? I imagine that it would be hard for you to  
20     contact sometimes.

**MS ARMSTRONG:** Yes. So we come across these workers by doing work site visits, and even though we don't have existing members in those worksites we will go out and try and educate people against the members in  
25     those work sites. We also access those workers through the various migrant networks and more often than not it is word-of-mouth.

**MS SCOTT:** In recent weeks there has been coverage about people receiving \$10 an hour when they should be receiving between \$21 or \$22 an hour. Could you talk about any instances where you are aware of people seeking to recover unpaid wages or any action you have taken, or action you are aware that the Fair Work Ombudsman has taken to recover wages in relation to your sectors? Could you talk about that?

35     **MS ARMSTRONG:** So I think it was earlier this year in 2015 where the Ombudsman was pursuing a pretty high-profile case here in Tasmania where the underpayment was in the realm of about \$60,000 and, look, over the years we have handled numerous cases which have been pretty profound and nothing to sneeze at. These are workers who have been working for, often,  
40     years before they come into contact with us or before they are at the point where they are willing to actually do something about it. They have been working for years, seven days a week, no annual leave, no sick leave. Far more than eight hours a day so the underpayments are quite significant.

45     **MS SCOTT:** Has the union been successful in taking action? Could you comment on that aspect?

**MS ARMSTRONG:** We have. We have been, as far as I know in my time in this role, we have been successful in all of the cases we have pursued in that regard.

5     **MR HARRIS:** Because these are not often your members, are they? They are people you have just found, as it were, in the workplace, usually by referral from a member, I assume, or something like that?

10     **MS ARMSTRONG:** Yes, sometimes they might have a friend that works at a different restaurant and they suggest to them that they call up and join our union and get some advice, or it might be through talks that we sometimes do at different training agencies or by just doing, essentially, random visits to workplaces to say, “This is us, this is who we are and this is what we do and if you have any questions you should get in touch with us.” And then they  
15     are our members.

20     **MR HARRIS:** We’re just trying to look at what the information sources are that are available. If you look at this issue, visa holders are potentially exploitable simply because of holding a visa and how they obtain information about what rights they actually have seems to be reasonably limited until you either encounter a union or become aware of the fact that we actually have an Ombudsman.

25     **MS ARMSTRONG:** Absolutely. I think it’s a challenge for Australian workers as it is for - we have numerous accounts of Australian workers being discouraged from contacting the union and being told outright by their boss that, “There is no union for you,” if they do raise questions about who they can contact, and I imagine that that is far more difficult and it is far more isolating for migrant workers, so yes. But there are a lot of migrant workers  
30     in the chef industry and there have been recent calls for opening up the intake of chefs in particular on 457 visas because - especially here in Tasmania, hearing the industry say that they can’t attract and retain enough chefs and they want to be able to import more people and yet at the same time on the other hand they’re saying that they want to reduce the penalty rates and to me  
35     it just seems crazy, if you can’t attract and retain enough staff to do this incredibly difficult job with absolutely unsociable hours and then not get compensated fairly for that, it doesn’t make economic sense and it doesn’t seem logical.

40     **MS SCOTT:** Are you concerned about the fact that employees say they have to import workers? What do you think lies fundamentally at the heart of this problem?

45     **MS ARMSTRONG:** I think particularly for chefs and cooks, and look, I’m the daughter of a chef, I’m the daughter of small business restaurant are is, I know that it’s incredibly difficult and the hours are really horrible; the hours are not family friendly. They are very unsociable and working in the kitchen

is actually pretty physically taxing work and the award rates for chefs and for cooks aren't that fantastic. It's great for a high-profile chef working in a high-profile restaurant where they are getting lots of media attention but for your average run-of-the-mill chef or cook, I totally understand why people  
5 don't want to do it and they come in and they burn out really, really quickly and the wages just aren't worth it at the end of the day. They have to make a decision, "Do I stick at this job for this amount of money or do I just go and find something else to do so that I can spend time with my family?"

10 **MR HARRIS:** That's right. At the end of the day, the statutory rate was one thing but the incentive to employ is the higher thing. That's true across the economy. It doesn't actually alter what we, I think, are proposing here. It doesn't seem to alter that. Clearly, if the rates were harmonised between Saturday and Sunday and they were insufficient to attract workers, employers  
15 would still have to pay more in order to attract workers.

**MS ARMSTRONG:** They would, which is why I don't understand the economic argument being put forward as to why that needs to happen and by saying "harmonising those rates between Saturday and Sunday" it is not  
20 about raising the Saturday to equal the Sunday rate, it is about reducing the Sunday rate to equal the Saturday rate, and that essentially is cutting people's take-home pay, people who regularly work on Sundays, regardless of why that Sunday rate was instituted 70 years ago or 50 years ago as a disincentive, today in this day and age people rely on that as a regular part of their income.

25 **MR HARRIS:** That's right. So it is a question was it set appropriately for the circumstances of the firms and the employees today. That's why we're doing the investigation. So that is why we are asking for the contributions. Speaking of which, thank you for your contribution today and we will be  
30 interested in the research proposition that you talked about. Particularly, just to re-emphasise, we would be interested in any data that's available around working in the periods of the working week that we have discussed in the report. But if not, certainly at least if you could put the analysis forward that you referred to earlier, that would be great.

35 **MS SCOTT:** Thank you, Lititia.

**MR HARRIS:** Thanks very much for your time today. I think now is the point where I can ask anyone who was in the audience who hasn't had a  
40 chance to chip in and would like to do so to perhaps stand up. If you want to chip in and make a contribution, identify yourself for the record. We can take comments on the record from you now or otherwise if there is no one who wishes to stand up and chip in - - -

45 **MS SCOTT:** It looks like there's two.

**MR HARRIS:** Would you like to make a comment on the record for us here today?

5 **MR MALLETT:** I am quite happy to make some comment and to take any questions that you may have.

**MR HARRIS:** Okay. Swing on up here to the microphones. Thank you very much to United Voice.

10 **MS ARMSTRONG:** Thank you.

**MS SCOTT:** Was there another gentleman who, after this speaker, wants to to - yes?

15 **SPEAKER:** Yes, I'll say something briefly.

**MS SCOTT:** Anyone else, just so we've got two?

20 **MR HARRIS:** We've just got to try and keep to time, that's all. So away you go. Five minutes, kind of thing, if that's all right.

25 **MR MALLETT:** Yes, my name is Robert Mallet. I represent the Tasmanian Small Business Council. It was interesting and listening to some of the comments that have been presented, especially from the employees associations. I think, to some degree, every employer would take offence to the concept put by Unions Tasmania that the only reason that business isn't open on a Sunday was because the employer wasn't prepared to work themselves.

30 I think we were given the example of Salamanca being a vibrant spot on the weekends and undoubtedly it is, but anybody who goes to all those smaller micro businesses in Salamanca will realise, in fact, that it is the owners who are working. They are there because they can't afford to pay for the double-time for anybody else to be there, because the trade, whilst it may  
35 be vibrant and there may be people sitting around drinking coffee et cetera, that doesn't necessarily mean to say they've got their hands on their pockets actually buying products from retailers et cetera. So it's very hit and miss.

40 You can't put the price up because it's Sunday and you have to take the penalty if you employ anybody. So that's a lot of the reason why those businesses are open. It's also the reason why a lot of businesses aren't open. They are not able to extract sufficient margins to pay for the double-time for a staff person to work there. So the only other sensible economic option is to not have the place open. You will lose less money by not opening and you  
45 will by having it open in the first place.

5 A week and a half ago Senator Richard McKenzie and the Federal Member for Lyons was in Tasmania doing an around-the-country on the reason why so few people from regional and rural Australia and in Tasmania study at university. One of the issues put up was the lack of opportunities for students to actually work when they were in town when they left their homes, and so had to purchase and rented accommodation, buy food, et cetera, independently and aren't able to live at home and travel, why this didn't happen.

10 One of the reasons, I'd suggest, is that the opportunities to work on Sundays are not there. If there was a lower penalty rate - and I'm not suggesting in any way shape or form that penalty rates should be abolished, that is absolutely not the Tasmanian Small Business Council or any of its members' point of view, but if there was a lower - and a penalty rate not  
15 dissimilar to that of a Saturday, it would be more feasible for a business to open and it would be more feasible to employ the sorts of people that come from rural or remote areas to live in towns to provide Sunday as being the only day they can actually work, because they are busy at university all the rest of the time.

20 Specifically, I also note with interest the bit about trading. The National Centre for Vocational and Educational Research last week came out with its most recent report on apprentice commencements and completions. I think, nationally, apprentice and trainee commencements are down 23 per cent or  
25 something near it. Interestingly enough, in Tasmania it's up 7.8 - 7.4 per cent. I'm still doing some work to compare why that is, but I'm hardly surprised that apprentice rates are down to such a degree.

30 We've moved from a point where four-year apprenticeships have been effectively abolished and the minute a person is deemed to be competent by both the training provider and the employer, I will agree, the person is then on the full trade rate. That takes the employee out of the workplace for a full 12 months at a more beneficial pay rate for the employer. That happened in about 2007, I think. Two years ago, we introduced the adult rate. No, the  
35 adult rate was this year, I think.

**MR HARRIS:** Yes.

40 **MR MALLET:** At 21. One of the other tasks that I do specifically as well as the Tasmanian Small Business Council, is executive officer of the Hair and Beauty Industry Association in Tasmania and it was unbelievable the amount of people who at 21 years told initially were told before Christmas, "Yes, I can put you on as an apprentice," and then had to be rung up by the employer saying, "Look, I'm sorry, I can't afford 80 per cent of the adult rate  
45 to pay you as a first year apprentice," so significant amounts of people over the age of 21 and older did not get a job.

I was asked and employers were begging me, "What happens if they sign an agreement that they're happy to work of the lower rates? What happens if - can I pay them back some of the money," or, "Can they pay me back for some of the money if I do that, because they're desperate to learn?"  
5 I'm sorry, I had to say, "Just do not do it. It is against the law. You will be in big trouble." It was shocking.

Now of course this year with the introduction - and I think we've also heard - I think you might have mentioned the year 12 supplement for  
10 apprentices. Undoubtedly employers are now - it is an impediment to taking an employee if they have actually completed year 12. Also it's an impediment that if they've completed part of a vocational course at school and go to an employer with nominally some form of lower level qualification that would reduce the time allowed as an apprenticeship, that is also a  
15 disincentive.

**MS SCOTT:** Can I just pause you there?

**MR MALLETT:** Yes.  
20

**MS SCOTT:** Is the trouble that the competency as tested doesn't reflect the competency as viewed by the employer?

**MR MALLETT:** You mean for the person who comes to work with a - - -  
25

**MS SCOTT:** Yes.

**MR MALLETT:** Are you talking year 12 or a vocation qualification?

**MS SCOTT:** I don't mind. I'd be interested in your view on - - -  
30

**MR MALLETT:** Okay.

**MS SCOTT:** Do we have an issue in the schools and the registered training organisations or do we have a problem with the employer? I'm just trying to work out where the problem lies in your mind. Is it the whole complexity of the system?  
35

**MR MALLETT:** It's a bit of a complexity. However, it goes to the nub of the fact that - I think another speaker, Mr Walsh, mentioned the fact that training should be for the industry, not the enterprise. I think the union movement have lost track of who is actually paying the wages. An enterprise is - well, it's interested in its industry, but in the long run its industry does not put bread and butter on the employer's table, so therefore at the end of the  
40 day the training must suit the need of the enterprise.  
45



5 For it to be industry recognised and nationally recognised, this is why we have national training packages; so that at least there is some consistency across the information which we're measuring. Going back to your VET in schools situation, I think lots of employers do not necessarily recognise or they choose to not recognise the qualifications provided by a school or college in a vocational sense, because often they are not well tested in an enterprise situation.

10 **MS SCOTT:** I think that clarifies it.

**MR MALLETT:** Similarly with year 12, many of the trades - and again let me hark, may I, on the hairdressing industry. A hairdressing employer would much prefer to find someone who was keen on being a good tradesperson at a younger age and then they could train them in their imagine to meet the needs of the enterprise. Now, that's not a case of keeping them stupid and barefoot and non-pregnant. It's about teaching them from the start the appropriate things that need to be done so that enterprise can stay in business. Develop a quality workplace relationship with all its employees and its customers.

20 **MS SCOTT:** So if they prefer to effectively have their own trainee, then what is the alternative at present?

**MR MALLETT:** The alternative would be to stay at year 12 and nominally this person has more information and knowledge.

25 **MS SCOTT:** Right.

**MR MALLETT:** Personally and from an organisational point of view, I'd much prefer to see a traineeship or an apprenticeship system which didn't demonise people for leaving school at year 10, but then provided skills to give them, especially in English and maths for example, the equivalent of a year 11 or 12 qualification.

35 **MR HARRIS:** Just let me hypothesise for a second.

**MR MALLETT:** Yes.

40 **MR HARRIS:** It seems at the moment to be sort of Yin and Yang. An employer might prefer someone who is less qualified but clearly enthusiastic and capable, in your terms, of being trained in the image that the employer has.

**MR MALLETT:** Yes.

45 **MR HARRIS:** Or the person has been trained at the school or college. That's Yin and Yang. If the person who was trained at the school or college was available to the employer before they graduated, such that they could

work out that they had the requisite level of enthusiasm, would this not help the transition?

**MR MALLETT:** It would help the transition.

5

**MR HARRIS:** I'm trying to find common ground here between the parties. It seems to me the parties might agree that that doesn't happen enough that the employer can be confident that this person is not only worth the additional small pay level that goes with a certificate qual, but also has the requisite enthusiasm. Why? Because I've seen them before they came a year 12 graduate with the qualification.

10

**MR MALLETT:** Rightly or wrongly it's about, as I say, training that person in your image.

15

**MR HARRIS:** Yes.

**MR MALLETT:** In that enterprise image, to give it that culture.

20

**MR HARRIS:** If you tried almost to pull the two over the top of each other - before the qualification and the pay level that went with it became the primary basis for determining, yes, I will, or won't employ you - would that not help or is that too optimistic to imagine that - - -

25

**MR MALLETT:** I'd suggest it's a bit optimistic. We talk about wages, but every employer that I've ever dealt with recognised that unless you pay a reasonable wage, you're never going to get anybody to work for you. We don't have that amount of unemployed people that will work for anything. Unless you pay a decent wage, we're not going to get decent employees and businesses, particularly small businesses, cannot afford dodgy employees. We can't afford employees who steal and we can't afford employees who commit fraud. We need people we can trust, who are competent, who are going to make us money. That's the only reason we stay in business.

30

35

**MR HARRIS:** Fair enough. I appreciate you taking the time to come up and put your views on the record. Can I say to you, as well as I said to United Voice, if there are any data sources that you have - - -

**MR MALLETT:** Yes.

40

**MR HARRIS:** Even partial data sources, we would be really happy to receive them. I'm just continuing my ad campaign for information. Thank you very much for your time today.

45

**MS SCOTT:** Thank you.

**MR HARRIS:** Steve, do you have a colleague down there at the back who wants to say something quick on the record? If you could just identify yourself for the purposes of the record, that would be great.

5 **MR BATT:** Yes, sure. Jacob Batt, Australian Manufacturing Workers Union. The main point that I sort of wanted to touch on was the flexibility agreement; so the individual flexibility agreements. Currently obviously we've got the BOOT test for that and the Productivity Commission's draft report showed wanting to have a collective enterprise contract.

10

**MR HARRIS:** Yes.

**MR BATT:** Which I don't really understand how it can be collective and individual at the same time.

15

**MR HARRIS:** I think the intention is it's not individual. It's collective.

**MR BATT:** Yes, but effectively it's a condition of employment for that person, whereas obviously the individual flexibility agreement is after you've commenced work.

20

**MR HARRIS:** The concept is this: if you join a firm, you join the collective agreement. If the firm has an enterprise bargain, it's called the enterprise bargain. It's collectively negotiated, but, as an individual, you're required to take the terms of the enterprise bargain. You weren't involved in the negotiation, you just have to take it.

25

**MR BATT:** Correct.

30 **MR HARRIS:** In the enterprise contract, you'd be offered the same thing. You wouldn't have been involved in its negotiation. You're asked to take it or not take it. It's exactly the same position as joining an enterprise bargain.

35 **MR BATT:** I think we differ a little bit on that. I guess the other part was replacing it with the no disadvantage test rather than the better off overall test. From what I could read, it didn't actually say what was going to be in the no disadvantage test, but is that looking to be something similar to what was in AWAs?

40 **MR HARRIS:** No. I think we've asked for propositions to help us define what a no disadvantage test would be, but our primary intention with a shift from a BOOT to a no disadvantage test is to ensure that the test that's used relates to the entirety of the agreement rather than a check that every individual sub-element of the agreement is better. That's simply because  
45 although the law seems to say that the BOOT should be holistic and not just every individual sub-element, some of the practices that are generated around it seem to suggest that they have been line by line rather than holistic; but

we're very interested in people's propositions around how you could better define a no disadvantage test to achieve just this and we have yet to come to a conclusion on that. That's something we'd really like submissions on.

5     **MR BATT:** Yes.

**MR HARRIS:** It's not to take any particular no disadvantage test from the past and say it's this one. It's to say what would a no disadvantage test look like that we could pretty much rely upon - we, being the people having to use  
10     the damn thing. Not just the regulators checking it, but the people developing it - to say, "Yes, I think this will pass the no disadvantage test," before they put it up.

**MR BATT:** I guess with that, I think it was quite obvious that the no  
15     disadvantage test that was used previously was not beneficial for employees and for workers, whereas obviously we've now got the better off overall test and that was put in place because of the fact that the AWAs weren't working and they were certainly in favour of the employer drastically and the exploitation of workers; so I'm very concerned with wanting to step away  
20     from the better off overall test which has put in a lot of safeguards for employees.

          Now moving onto the apprentice stuff that I think Robert was talking about, talking about it being a disincentive in relation to the changes with  
25     someone finishing year 12 and finishing year 10, currently Tasmania has quite a lot of people that are not finishing year 12. I think it's the worst in the country, so shouldn't we be trying to increase people to be finishing year 12 and they may actually have a higher rate of pay, being a difference of somewhere between 2.5 per cent or 5 per cent of their wage?

30     It's not a drastic increase between finishing year 10 and finishing year 12. That's not really a disincentive for not hiring someone. It's just a disincentive that your profits are not going to be as high in relation to those changes for the first and second year apprentices which will change.

35     **MR HARRIS:** I think we've triggered this from the discussion we had earlier this morning with the representatives who appeared then, because the suggestion was that on graduating from year 12 with a certificate I or II qualification, you were actually at a disadvantage getting a job versus  
40     someone who didn't who was the same age, because the qualification requires you to be paid at a higher level. We were asking the question, is this right or not? We were just asking every - - -

45     **MR BATT:** Yes. I'm just putting forward my opinion that - - -

**MR HARRIS:** You're saying it's not.

**MR BATT:** Yes.

**MR HARRIS:** All right.

5     **MR BATT:** Obviously talking about training - and I think Robert spoke about dodgy employees. Well, we need employees that are actually trained specifically in that industry. The holistic approach of people being trained in that industry; a boilermaker or a welder that can work in a range of areas and things like that, as well.

10

**MS SCOTT:** So you have concerns about the national curriculum or the state curriculum for those particular subject areas?

15     **MR BATT:** No. I'm just sort of making a generalised thing in relation to training in general. For instance, the print industry, as well, you could look at that. If you have someone - - -

**MR HARRIS:** This is industry-wide versus enterprise.

20     **MR BATT:** Yes, industry-wide. For instance, in the print industry, if someone is doing some training, it needs to be the training that they're actually doing. Their Cert III needs to be specific to the work that they're actually doing, rather than doing some training that won't actually assist them in recognising the skills that they're actually doing in their workplace,  
25     because there are obviously quite a lot of - I think it's about 10 or so Cert IIIs that they can actually do.

**MR HARRIS:** Overall we have a draft recommendation saying we'd like to look at the certificates and apprenticeship arrangement holistically, so we're  
30     gathering information for the purpose of hopefully strengthening that recommendation and convincing the government that maybe a piece of work should be done in that area, as well. Anyway, I appreciate your time today.

35     **MR BATT:** Thank you.

**MR HARRIS:** Thank you very much. I think, as a result of that, we are adjourned until Melbourne tomorrow morning.

40     **MATTER ADJOURNED AT 1.07 PM**  
**UNTIL TUESDAY, 8 AUGUST 2015**