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SENATE

SELECT COMMITTEE ON JOB SECURITY

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SENATE

SELECT COMMITTEE ON JOB SECURITY

Tuesday, 27 July 2021

Members in attendance: Senators Canavan [by video link], Sheldon [by video link], Small [by video link], Walsh [by video link].

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Committee met at 10:30

CHAIR (Senator Sheldon): Welcome. Thank you for joining us this morning. I declare open this 11th public hearing of the Senate Select Committee on Job Security. Of course, if not for the travel restrictions imposed during COVID-19 the committee would have been in Perth to hear from West Australian organisations today. The committee thanks those witnesses for giving their evidence remotely. For the benefit of those listening, this is a public hearing and a *Hansard* transcript of the proceedings is being made and the hearing is streaming live via the web, which can be found at www.aph.gov.au.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It's unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It's also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question the witness should state the ground on which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground on which it's claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request may also be made at any other time.

The committee is due to report on 31 November 2021. Where a witness takes a question on notice in this hearing answers should be provided by 10 August 2021. All witnesses participating today will be appearing via videoconference or teleconference.

The RCSA has lodged submission 73 with the committee. Would you like to make any amendments or additions to your submission?

Mr C Cameron: No amendments required, thank you.

CHAIR: Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I now invite you to make a short opening statement—no longer than two minutes to allow time for questions. At the conclusion of your remarks I will invite members of the committee to ask questions. If you have prepared a longer opening statement you may email it to the secretariat for incorporation into *Hansard*. Over to you.

Mr C Cameron: Thank you, Senator, and thank you to the committee for the opportunity to present in this inquiry. It's good to be back before the committee. We'd like to make a short opening statement articulating that the RCSA is indeed an industry body that represents 850 recruitment and staffing firms. Staffing firms can include those that, at the industrial end, might be blue-collar labour hire, right through to executive appointments and contracting as well. The industry employs some 360,000 on-hire workers. We believe it's very important to ensure that the consideration of the industry is not just focused upon the blue-collar labour hire segment of the market. The largest segment, or users of it, are actually in the banking, finance and insurance industries—large sections of health and white collar. So we'd invite the committee to engage with us on the broader range of on-hire employment. The significant number of those on-hire employees are casual on-hire employees, but an increasing number are on-hire permanent employees. In fact, the trend is towards looking to engage more individuals as on-hire permanent employees where there is certainty of assignment availability.

In short, we feel that it's very important when dealing with matters relating to flexible work and so-called insecure work to ensure that we remain focused on the facts rather than emotions. We are concerned that the 'slogans' of this issue presents a lack of sophistication to how we deal with an increasingly dynamic and changing world of work. As much as many of us would like to, let's say, hold the pace of change within the working environment and also the economy, it's not always possible, as we understand, and I think COVID and global conditions are evidence to that. We are keen to examine ways in which we can respond and get the balance right between the need for flexibility and promoting competition within the Australian economy but also protecting the interests of those who wish to work, indeed, directly or on a permanent basis. We put it to the committee there are some, of course, who prefer to work that way, but there are many who have adjusted and are working alternative ways—and many through our members. We also put that we must respect that life, business and work are continuing to change. Many are looking to fit work around life, rather than life around work. We feel that we, and our members, provide a very good opportunity to do that. Through the pooling of casual employment opportunities we can provide a solution to the so-called insecurities.

Finally, we would say that we must respect that the workforce is, yes, diverse and dynamic but ultimately secure work is derived from secure business. We invite the committee to consider the increasing—what we would call—unpredictability of business conditions. That could be through less loyalty in contracts, changing buyer and consumer decisions, dynamic environmental conditions, greater competition, digital and global. COVID is another prime example of how business is being challenged as well. I think it was the Leader of the Opposition who in February articulated that secure jobs come from viable businesses. So we think it's important for the committee to examine how do we ensure we can provide support to business to have the confidence to grow? I'll leave it there, Senator, and invite questions.

CHAIR: Thank you very much, Mr Cameron. I will now ask Senator Canavan.

Senator CANAVAN: Thank you, Chair. Thanks for your evidence to the committee. In your submission you refer to the fact that fewer than four per cent of long-term casual employees seek to convert to permanent work. Can you tell me a little bit more about where exactly that evidence comes from? Is that just your experience or is there a report I might have missed in your submission that's behind that?

Mr C Cameron: The first inquiry into the rates of conversion occurred around about six years ago now when there were the first endeavours to incorporate casual to permanent conversion clauses into a number of modern awards. Senator, you might be aware that most recently the government introduced further changes to bolster that and expand that to all award covered employees. We did an examination as to how many employees would be looking to enter into permanent work if presented with the opportunity and we would be happy to go and extract that research we conducted if that would help the committee. Furthermore, we then went and looked at this as part of the more recent examination of how many employees do want to convert to permanent employment. We identified that, when presented with the right to convert, as was the provision under awards, less than four per cent even elected to and a smaller number actually converted.

I will provide you with one quick example from one of our larger members, who in fact has already appeared before this committee. They did some research over the years 2018-19. They employ over 20,000 on-hire employees across Australia and they identified that, of 18,740 casual employees that were informed of their right to convert from casual to permanent, only six ultimately accepted offers of permanent employment. A larger number indicated an interest in that, but, when presented with what that would mean in terms of rates of pay, their requirement to be directed to work where the employer required them to work and some of the other reductions in flexibility, a very small number—0.03 per cent—actually elected to convert. It's certainly our experience that, when presented with the opportunity, many choose to remain as on-hire casual employees.

Senator CANAVAN: To go back to that four per cent figure, is that based on a survey of people indicating whether they'd like to convert or not, or was it actual people electing to make that decision under an award that allowed them to do so?

Mr C Cameron: That's those who responded indicating that they would like to contemplate the move. We didn't look at how many actually made the move to permanent employment, but it would be a similar story.

Senator CANAVAN: Did your work look at why the other 96 per cent were happy with casual employment? What were the principal reasons why they didn't want to convert to permanent work?

Mr C Cameron: We haven't looked at that as part of that survey. We had previously worked with RMIT University to examine what the attraction of ongoing on-hire casual employment was. Quite interestingly, one of the issues or the matters that they identified was higher rates of pay; however, there were other things such as certainty in terms of when they are required to work overtime et cetera and being paid for each and every hour worked. Again, in many circumstances it was their desire for what we might describe as agency—the desire to have a greater sense of control over when and where they're working. Again, we acknowledge that there are a number who do prefer to have that certainty of permanent employment—no question—but a significant number are choosing to maintain that level of flexibility.

Senator CANAVAN: Some have said, as you mentioned, that the government's recent changes, the new laws that have gone through the parliament, provide too much ability for businesses to say no. There are certain grounds, and unreasonable grounds, for a business to say no to a request for permanent work. What's the experience of businesses and members in your industry? Are they generally open to allowing people to convert to permanent work, or is there a preference to keep people on casual work?

Mr C Cameron: What our members indicate to us is that they want to ensure that they're not providing what we might describe as sham security. That is a circumstance where one is obliged to offer security where it may not be reflected in the certainty of the assignment with the client. It in fact is a preferable commercial outcome for our members to have employees employed on an on-hire permanent basis because it gives them greater certainty

with their clients and regularity of income, and of course it's a lot easier for business planning. However, the last thing our members want is a circumstance where they're required to employ an individual on a permanent basis only to find out that, due to the unpredictability of a client's business, they end the assignment and then that employee, who may have relied on that offer of permanent employment, is made redundant if they can't be assigned to an alternative client, which many of our members do.

You'll be hearing later in the day from one of our other members who has a large number of on-hire permanent employees—I think Mr Fairbank will be presenting to the committee after this—and they're a very good example of a firm that does maintain a commitment to on-hire permanent employment where possible and where it is genuine and can be sustained. Certainly, we're not opposed to on-hire permanent employment.

Senator CANAVAN: I'll just go to a different issue. Later on in your submission, you mention that the proportion of people working in labour hire and independent contracting has fallen since 2001. I'm not aware of that. Where is that data from, exactly? Is that your own internal data or is there some external source for that?

Mr C Cameron: We've obtained that both from ABS and also from HILDA. You'd be aware that HILDA is probably the most respected independent research from the University of Melbourne, as well. I'll be honest with you, Senator, it continues to perplex us that there is this notion that the workforce is becoming more casualised, when of course the percentage of casual employees, on-hire employees—that is, labour hire employees and independent contractors—has not increased over the past 20 years. There have been numerous facts checks done through the ABC and a whole range of other organisations that have found that casual employment in particular is not increasing. We understand that there are some concerns of the union movement as to their capacity to organise workers when they're mobile and they're on shorter-term contracts. We understand that. But we're all having to adapt to a changing world and changing business conditions. We don't feel that that's a reason to really almost engineer the introduction of permanent employment when it's inconsistent with economic conditions and, in many cases, the decisions of workers.

Senator CANAVAN: Thank you very much. If you could provide that data on notice, that'd be great. I'm aware of the casual employment figures; we've got those from ABS. So maybe I'm missing something from the committee, but I'm not aware of the data series on labour hire and independent contracting. Thank you very much, Chair.

Mr C Cameron: We're happy to provide it.

CHAIR: Thank you, Senator Canavan. Senator Walsh.

Senator WALSH: Thank you, Chair, and thank you very much, Mr Cameron and Ms Lord, for being there for our inquiry today. I want to start with some questions from your submission around the gig economy. You've got quite a substantial contribution in your submission on the gig economy, and you raise a variety of concerns about gig platforms and the implications for workers of those platforms. Your submission says that 'these environments that pose a growing risk to vulnerable workers who don't have any assistance to the social protections and employment protections that exist in an employment relationship' are of concern to you. Can you expand on that in terms of the specific risks that those workers face and the protections that they miss out on?

Mr C Cameron: Yes. I will add that, for many years now, I've been concerned about the rise of the contractor platforms. I raised it with the former Fair Work Ombudsman, Natalie James, well before the media was interested in this. Of course, it's our area of interest to examine new and emerging forms of work. Our primary concern is with platforms that promote independent contracting, especially amongst those individuals that are not at a professional level and have maybe the knowledge and wherewithal to manage such an independent contracting relationship. We're primarily concerned that they don't receive benefits, typically, such as superannuation. We're concerned that, in many circumstances, they're not eligible for workers compensation. We're concerned that, even though they might be deemed to be a worker under model work health and safety law, quite often the individuals whom they work for—hat being the party whom the platform matches them with—would not understand that they have responsibilities and obligations to those individuals. Short, small, task based work through one of these gig platforms—for example, cleaning the gutter of a domestic home of an elderly resident—could result in an individual falling and suffering a serious injury. So we like to differentiate between that type of work and labour hire employment or on-hire employment, where you do get all of those benefits: award coverage, work health and safety, respect, workers compensation, superannuation and the rest of it. We're quite proud of that. We're also somewhat concerned about the prevalence of these models in the health sector and especially in the disability-care sector. We're very concerned that vulnerable clients, or representatives of disabled or elderly clients, will not have the time to properly analyse or, indeed, understand that, when you source an individual through these platforms as an independent contractor, you're not engaging somebody even on a labour hire basis; you're simply being

matched and introduced to them. We think that presents a large number of problems and we've raised it very vocally over a number of years.

Senator WALSH: I'll come to some of those issues that you raised more broadly. Just sticking with your submissions on the gig economy for a moment, you say that your organisation believes that lower skilled, lower income workers in dependent relationships must be protected under law, in line with the regulatory framework that staffing agencies adhere to when placing workers. Does that mean that you believe that there should be some new legislative protections for gig workers, and what are your thoughts there?

Mr C Cameron: Yes, I do. I'll start by saying I also respect that there are individuals in the modern economy who do like the sense of agency and freedom that comes with the gig economy. So I think we do need to deal with that. I've been working very closely with Ms James, who's been, as you would be aware, working closely with the Victorian government around the on-demand workforce. I engaged with her very early on and have a very close working relationship with her. I think many of the recommendations she made in her report are very sensible, and I do think we probably need to see a new regime where it is open to those who have less economic and bargaining power to source determinations, potentially, as to whether they are genuinely independent contractors or whether they should be deemed employees.

There's also the issue of a fair playing field. I'll make no bones about the fact that we and our members do sometimes get concerned about being undercut by organisations that provide services; they have no obligation to provide all of the statutory costs that our members bear. So I would be very open to examining that type of arrangement. I think it is high time. We set up a working group within RCSA to look at whether it's time to examine the notion of a 'worker' definition, similar to what has occurred in the UK, which sits somewhere between an employee and a genuine independent contractor. I do hold concerns, however, that, by establishing the definition of a 'worker' that has some of the obligations of employment, but not all of them, we'll potentially attract some firms that may want to, let's say, reduce their costs to engage individuals as workers rather than employees.

We recently came out and actually encouraged and commended Menulog for their commitment to examining the employment of their riders. That having been said, there are a lot of issues there that need to be examined in terms of the complexity and flexibilities of the award structure to allow that to occur. From my point of view, I'm very interested in Ms James's recommendations.

Senator WALSH: Finally, on the gig economy, you just mentioned undercutting and concerns about being undercut by platforms that don't provide the same level of protection—superannuation, workers compensation, guaranteed wages, all of those things. Is it of concern to you and your members generally that this is a model of work that's been used to undercut the market on pay and other conditions and potentially undercut proper employment standards?

Mr C Cameron: Yes, it is. Interestingly, however, many of our members feel that they're not being directly undercut, other than in the examples that I've provided in relation to the NDIA segment, the health segment of the economy. As for some of the organisations that provide these services—for example, food delivery riders—our members don't operate in that space. Primarily where there may be undercutting occurring is in the health space.

We are, however, concerned that 'from little things, big things grow'. For example, an individual who offers to do general administrative services through one of the online contracting apps might begin by being introduced to a small business in the suburbs, and then, instead of that individual simply completing a small task, a piece of filing work, what happens is that that individual then performs ongoing work. We would say that it becomes very difficult to argue that that is just ongoing small parcels of work; it's more akin to continuing employment. In those circumstances, they should be covered by, for example, the clerks private sector award.

So the areas of concern are certainly in relation to health and they're in relation to administrative services. There's probably less concern in the ICT space. And—you would appreciate this—whether it be in the arts, whether it be in entertainment, whether it be in ICT, there seems to be a history of individuals being more comfortable with being engaged as independent contractors, or it is more prevalent. We certainly try to avoid that within our membership, but there are some individuals out there who will only work as independent contractors—for example, when it comes to computer programming. We're less concerned about what we call the sophisticated level; it's more about that unskilled, semiskilled level, where there's low economic power.

Senator WALSH: Just moving to some of the other evidence we've had around labour hire in this inquiry, I'm sure you're aware that we've had a particular focus on the coal industry and the use of labour hire there. We've certainly received evidence about labour hire companies doing something similar to what you have just described platforms as doing, and that is undercutting employment standards for directly employed workers in that industry.

We've heard that the majority of labour hire employees in coal are casuals and we've also heard about a pay gap between labour hire casual mine workers, even with their loading, and permanent employees of mine operators. Are you aware of that pay gap, and what it would be?

Mr C Cameron: If I can just quickly deal with the issue of undercutting employment standards, we certainly would articulate that there's been no undercutting of employment laws and rights. Our members employ people pursuant to awards, and in fact many enterprise agreements are made with unions or endorsed by unions and provide all of the benefits. I think it's very important to differentiate between circumstances. For example, somebody who might be a driver in the black coal mining industry who is on-hired and employed pursuant to all employment conditions, and a lot more, can earn \$125,000 per annum, which puts him in the top five per cent of income earners within Australia. We'd like to differentiate that from somebody who has been engaged on, for example, less than \$15 per hour, with no super, no workers comp and otherwise. I'd just make a very clear distinction there. Am I aware of---

Senator WALSH: I'll just follow up. The question wasn't so much about whether the rates of pay for labour hire in coal are lawful or not; it was just straight out: are they generally less than what the permanent employees get?

Mr C Cameron: It's a good question. And it depends. Some of our members have enterprise agreements with unions that require them to pay site rates, so they would pay site rates. They may not pay all benefits, because there will be client benefits that it's not appropriate to pay to on-hire workers. Some clients will have provisions in their enterprise agreements that say they must engage labour hire firms on the same terms and conditions as their direct hire employees. So there is provision within the act to deal with that. But of course, yes, there are circumstances where our members are engaged to provide services to clients, and we understand that in those circumstances, even though they're paid very highly, they are not paid at the same rate as the enterprise agreement that is being struck between the client, on behalf of their employees, and the union.

Senator WALSH: I will just finish on that. Is that a part of the business model of those labour hire firms to be able to offer savings on wages in the order of 22 to 40 per cent? That is the evidence that we've had to this inquiry so far.

Mr C Cameron: We conducted some research with the Australian Human Resources Institute recently because we were interested in understanding—this wasn't in black coal, mind you—what the motivations were for the engagement of on-hire workers, and only two per cent of firms indicated that they engaged on-hire firms for the purposes of reducing costs. We would say that, although there are examples where black coalmining firms would engage labour hire for a range of reasons, the reduction of cost is a marginal reason for that. I wouldn't suggest that there is no reliance upon reduction of cost or efficiencies because of changes in project needs and commodity prices. Would I say that it's part of the business model? I don't think it's the primary business model. The primary business model is to ensure that the right people are in the right place at the right time doing the right work. That's what our members pride themselves on.

Ms Lord: I will just make an observation on the question of the business model for labour hire more broadly. The HILDA research gives evidence that direct hire casual employees on average across Australia are paid five per cent less than the on-hire casual employees. So, across the board, there is evidence that the general rule is that on-hire casual employees receive a higher rate of pay than the direct hire casuals.

Senator WALSH: In relation to mining, finally, we've had evidence from the companies themselves that the labour hire rates are 20 per cent less. According to the Minerals Council, it is 24 per cent. The union puts it a bit higher, at 30 per cent. If it's not part of the business model and the business model is just about flexibility and skill shortages, why are the rates not the same?

Mr C Cameron: I think that's a question that is best posed—and it sounds like you have posed it—to the clients rather than the providers of the labour hire services. I think the point that we are trying to get across is that black coalmining, I think we determined, is probably only about one per cent of all business within on-hire. There are many examples, and Ms Lord articulated this through HILDA research. The further you go up the occupational classes, the more they are paid in contrast to the client employees. So I think to simply focus on black coalmining is doing a disservice to the rates of pay and conditions of all on-hire employees.

Senator WALSH: It has nonetheless been a focus of the inquiry and something that's important to those regional communities. I think the chair wants to go to Senator Small.

Senator SMALL: Good morning, Mr Cameron and Ms Lord. I want to pick up on a point you made very early on about the slogonisation of work, where the 'same job, same pay' line is being used. On the face of it, it

seems fairly straightforward and a reasonable proposition. Do you have any insights into whether it's a realistic concept or workable in practice?

Mr C Cameron: Thank you for the question. The concept of 'same job, same pay' has been promoted and suggested, certainly by Labor and the Greens and also the union movement, for many, many years. It's a concept that, in theory, sounds sensible and reasonable. However, in practice it becomes highly problematic.

We have sought clarity as to this policy position; Ms Lord and I have sought that clarity multiple times and haven't been able to obtain it because it is so highly complex. We feel that, in practice, it would become extremely complex and difficult to apply consistently and fairly. We feel that many of the direct-hire employees would feel aggrieved if an on-hire employee came into their work environment and immediately received the same rate of pay as them, on the basis it doesn't account for loyalty, enterprise knowledge or skill development over a significant period of time. There are also a range of other factors that come in here. When we talk about 'same job, same pay', pay is not just a rate of pay; there are a whole heap of other benefits, as the committee would understand, that need to be accounted for and calibrated in such circumstances—productivity payments, shift work payments, RDO provisions, extended leave provisions, allowances, discounts and otherwise.

The other concern we have is that, as we articulated earlier, the HILDA research indicates that many on-hire casual employees are paid more than their direct-hire counterparts. We haven't yet obtained an answer as to what would happen in those circumstances where you want 'same job, same pay'. Those individuals who are earning more need to be reduced down to the same level as the client, or you need to increase the client employee level. Even just touching the surface of this, we're very concerned that what sounds like a reasonable proposition in theory becomes highly complex in practice. In fact, there was some contemplation of this in New Zealand, about a year and a half ago, and they dropped the legislative proposal on the grounds of the same levels of complexity.

Senator SMALL: Out of interest, did you make a submission to that? Are your members operating in New Zealand as well?

Mr C Cameron: Yes, we did. We represent about 110 firms in New Zealand, and we raised that concern. In fact, it probably would have been more doable in New Zealand because they don't have the complexity of the award structure there. But the reality is that it became too complex and, as a result, it was dropped by their Labour Party.

Senator SMALL: That's useful; thank you. Another thing we have spent a lot of time in this inquiry talking about is the fact that, despite the enormous disruptions to the Australian economy over the last 20 years, the rate of casual employment has remained relatively steady, at about 25 per cent, since 1994; that's using ABS statistics at the aggregate level. Do you see that on-hire employment, as you term it, provides benefits to casual employees within that context?

Mr C Cameron: We do. I started my presentation to this committee by articulating that we genuinely sympathise with the capacity of a certain segment of the workforce to respond to an increasingly changing dynamic. We sympathise with individuals' capacity to respond to an increasingly changing and diverse world of work. As I mentioned earlier, one of the things I think it's very important for us to look at—and this was raised by Mr Albanese in February—is this notion that we have to understand how we promote viable business so that we can then potentially provide more secure work opportunities. From our point of view, we are very proud of the fact that, if we accept there are always going to be casual employment engagements and quite often those disparate casual employment engagements, through a staffing firm you can actually pool those casual employment opportunities.

If we are looking at sustainable ways in which we can respond to less certainty, less security, within business that then flows potentially through to workers' experiences, we actually feel we play a very vital role in pooling what would otherwise be direct-hire casual engagements and turning it into semi-permanent work opportunities. I would encourage you to engage with Mr Fairbank, who presents after us, around the ways in which they, through certainty of assignments and multiple clients, can take what would have otherwise been short-term casual engagements and converting it into on-hire permanent employment where an individual can then be assigned out to multiple assignments but on a permanent basis. This is one example of where if we can work with our industry rather than, as some try and do, demonise our industry we actually provide the solution to the so-called problem rather than actually perpetuating the problem.

Senator SMALL: We've also heard evidence that despite the fact that the overall aggregate level of casual employment hasn't changed—the best way I can probably phrase this is that—people feel insecure in their employment and are desirous of more secure or more permanent forms of work. There are lots of statistics, like we were talking about with the very low rates of casual conversion et cetera to support that. I'm asking for any

insight you might have on an alternative view that doesn't support that idea that people are desirous of increasing permanency and are desirous of increasing flexibility perhaps?

Mr C Cameron: We articulated earlier to Senator Canavan our concerns about the—

CHAIR: Mr Cameron, my apologies. If somebody could check and make sure that if they're not speaking that their connection is on mute. Thank you. Back to you, Mr Cameron.

Mr C Cameron: Thank you. We articulated to Senator Canavan earlier, Senator Small, our concern around this notion that there is actually casualisation occurring. Casualisation one would assume means that there is an increasing number of individuals that are being engaged in casual employment, whether that be on-hire—that is, labour-hire casual employment—whether it be direct-hire casual or whether it be independent contracting, and the ABS data certainly disputes that. If I could go one step further, and again I think it's really important here to make sure we are relying on genuinely independent, credible research, when one looks at the HILDA data and the research of Professor Borland, who is also from the University of Melbourne, he actually found in 2017 that since the early eighties there has been an increase in the proportion of the workforce in long-duration jobs of 10 years or more and a decrease in the proportion of workers in jobs of less than 12 months and, moreover, found that workers themselves are feeling more secure in their employment, with the proportion of workers worried about the security of their jobs decreasing over the past 15 years. One of the things we feel is very important to do is to rely upon facts rather than feelings. Again, we understand that there are feelings of uncertainty during times of change, but, if we simply develop policy principles and positions based upon our feelings rather than the facts, then we are concerned that we will be undermining the capacity of our economy to remain competitive and to adapt to opportunities in an increasingly global market. The HILDA research also went on and found that levels of mental and physical wellbeing were no lower among Australian workers employed on a casual fixed-term or self-employed basis. So many of these notions of the concerns around casual employment appear to be certainly being undermined, discredited, by genuinely independent research through the University of Melbourne.

Senator SMALL: Brilliant. On notice, if you wouldn't mind shooting that through, that would be really helpful because I actually haven't seen that before. I've basically run out of time; thanks very much for your time this morning.

CHAIR: There was evidence given yesterday which you may or may not be aware of, but you may be aware of the incident. The construction and general division of the CFMMEU provided evidence about an ongoing case against Hanssen, a building company, and labour hire firm Personnel Contracting. A construction worker named Daniel McCourt had been hired by Personnel as an independent contractor and was paid 25 per cent below the award. This arrangement was criticised by the Chief Justice of the Federal Court, who said:

The notion that Mr McCourt was an independent contractor when working on the building site and that Hanssen was not liable for his negligence would defy any rational legal principle and common sense.

Is what Personnel did similar to what Uber and companies like Mable, in the aged-care sector, have done, and is it effectively the same?

Mr C Cameron: I have had some experience with this because one of our members—and I can articulate the labour hire firm you referenced are not members of ours—was significantly aggrieved by this type of arrangement, and we actually worked with them to look at their options to hold a client to account. I would love—but time may not permit—to talk about our responsible procurement working group, which is a really important part of improving our industry. The example given—and I can't say this specifically—appears to be more in line with what you might describe as an on-code-type arrangement. You're aware of the troubleshooters decisions of many years ago, where there are certain business models—and it's certainly not something that we accept within our membership—that promote being able to engage individuals as independent contractors in trade, skilled and semiskilled roles. We've been working very hard and have developed a certification program called StaffSure, and I would encourage the committee to look at StaffSure.org. We worked with the AWU and the NUW to develop that to try to make it easier for clients to engage labour hire firms that are reputable. One of the areas of that is certainty of engagement. I think that's a really good example of the type of activity in our industry that we are absolutely disgusted with, where there are attempts, similar to the gig economy contracting platforms, to try to subvert basic employment conditions. To that extent, I think there's a big onus upon clients to do more here. This is where we've also supported greater onus and liability on clients, where they knowingly engage such firms that are not meeting their basic employment conditions.

CHAIR: I want to go to another matter that was raised yesterday, particularly concerns raised regarding no-poaching clauses. We received evidence from workers about no-poaching clauses or what is also referred to as a non-solicitation clause. These disincentivise employers from directly hiring workers that have been engaged

through labour hire and financially penalises them if they do so. Are these clauses common, particularly in the resources sector?

Mr C Cameron: The non-solicitation clauses, as you would be well aware, certainly are common in all forms of employment, especially at the professional level. When it comes to staffing firms, labour hire firms, there are provisions that typically require what you might call a 'temp-to-perm' fee, where a client looks to offer that individual permanent employment directly and there would be a fee payable to the labour hire firm. This is an endeavour by them to receive some return on the investment of recruiting, onboarding and assessing the individual and managing them. Typically, those types of fees get removed after a period of time. Typically, after maybe a period of 12 months, they would no longer apply, but they have been certainly a part of the industry. In some cases, clients will seek to enter into commercial circumstances and remove such provisions as well. They're not designed to impede the capacity of an individual to become a direct-hire employee, and there's a significant percentage of on-hire casual employees that do become direct-hire permanent employees of the client.

CHAIR: Similar questions were asked of Anglo American, and they said:

Absent some other factors that I can't think of right now, the answer to that would be that you would be unlikely to engage a higher-cost option than what you had by employing your own people directly ...

And then Mr Mansour from Rio Tinto said:

We'd be unlikely to engage a labour hire company unless there was a significant short-term operational need in that type of instance.

I just want to go to this question again. The evidence we received was that in the black coal industry there's a 22 to 40 per cent differential in wages between labour hire and direct-hire workers doing the exact same job. When some of your members have no-poaching clauses or non-solicitation clauses, wouldn't that be a further disincentive for companies to employ workers directly?

Mr C Cameron: It might, on the face of it, look like that might be the case, but all the evidence—and we've got research on the number of on-hire casual employees that do become direct-hire employees in such circumstances—would seem to go against the notion that these 'temp-to-perm' fees would actually disincentivise engagement. I think, and as you would fully appreciate, especially at a time when there is such a significant skill shortage, it's commonplace for clients to appreciate that it is fair and reasonable for a staffing firm to receive some benefit from the work that they've completed. For example, if I can put it this way, let's say one of our members were to recruit, onboard, assess and then assign a worker to a client, and then after two weeks they offered them permanent employment and there was no fee payable back to the staffing firm. I think most would appreciate that that would be unfair and unreasonable given that, in the same circumstances, if they'd relied upon our member to hire them or source them on a permanent basis, they would receive anywhere between 12 and 25 per cent for a recruitment placement fee. This is simply an endeavour to fairly reward the investment in that individual in the sourcing placement, onboarding and management of them. Does it become a disincentive? If that is the case then, as I said, most clients would seek to negotiate either to remove those provisions or have them removed after, for example, a six-, nine- or 12-month period.

CHAIR: Thank you. There are a number of questions I would love to ask, but I'm mindful of the time. Thank you, Mr Cameron and Ms Lord, for your time. I appreciate your giving evidence today. Your evidence will assist the committee in its deliberations and the preparation of its final report. If you've taken any questions on notice, please provide responses to the secretariat by 10 August 2021. Thank you very much, and have a good day.

Mr C Cameron: Thank you to the committee.

HOCKADAY, Mr Cameron, Chief Commercial and Risk Officer, WorkPac [by video link]

[11:23]

CHAIR: I now welcome Cameron Hockaday from the WorkPac Group. Thank you for joining us. I note that you sent a submission, which was circulated, I think, yesterday afternoon. I appreciate that. Information on parliamentary privilege and the protection of witnesses and giving evidence to parliamentary committees has been provided to you as part of your invitation to appear.

I now invite you to make a short opening statement of no longer than two minutes to allow for time for questions. At the conclusion of your remarks, I will invite members of the committee to ask questions. If you have a prepared a longer opening statement, you may email it to the secretariat for incorporation into the *Hansard*.

Mr Hockaday: I probably won't make an opening statement. The purpose of giving the committee the material last night was to give you the information on hand. If it pleases the committee, I'm happy to go directly to questioning.

CHAIR: Thank you; we'll do that. I will start with a few questions. As you'd surmise, we want to ask about your case in the Federal Court against Skene and Rossato and the impetus behind the government's IR omnibus bill. The Morrison government also applied to intervene in your Rossato High Court case. Is it fair to say you've been working closely with the Morrison government on this issue?

Mr Hockaday: I wouldn't say that, no—definitely not. The matter is before the High Court, obviously, so there's probably a limit in terms of the comments I can make, but these proceedings have been on foot for circa eight or nine years now since the original Skene case was started. We've consulted widely with both sides of government throughout that period.

CHAIR: I go to the Federal Court case that found Mr Skene was a permanent employee, not a casual. As a result, you were ordered to pay Mr Skene an initial \$27,790 and then a further \$5,954 on appeal. That's just under \$34,000 all up. After the government's new legislation, that \$34,000 would have stayed in your pocket and not gone to Mr Skene. Is that correct?

Mr Hockaday: Sorry; what was the first part of the question?

CHAIR: The total amount Mr Skene was owed was \$34,000 all up. After the government's new legislation, that \$34,000 would have stayed in your company's pocket and not gone to Mr Skene. Is that correct?

Mr Hockaday: That would be correct.

CHAIR: Before the government's bill, there were thousands of long-term casual mineworkers around Australia who had been entitled to similar payments as Mr Skene. Because of the Morrison government's bill, that money won't be going to mineworkers. It will stay with WorkPac and other labour hire firms. Is that correct?

Mr Hockaday: Subject to the High Court decision, that would be correct.

CHAIR: I go to evidence that was given two weeks ago. We received evidence by a former mineworker, Mr Rob Foot. I say 'former' because he was forced into retirement, he says, when WorkPac took over the contract for the United Group Resources mine, where he'd been a permanent employee for 14 years. After WorkPac took over, he asserted, he was told he would have to become a casual and that his pay would drop from \$150,000 to \$70,000. He was also told he would have to pay for his own training, certification, medicals and inductions. Mr Foot said, to use his language, 'they could stick the offer' somewhere I won't repeat and opted to retire instead. Is that typical of the way companies and, in this particular instance, WorkPac find themselves operating when a new contract comes into effect?

Mr Hockaday: No, I disagree with that. I did see that article in the *Courier Mail*. I'm not familiar with Mr Foot's individual circumstances. I'm happy to dig into that further with some additional facts. I'm not sure at what point in time Mr Foot alleges that happened, but, for starters, we pay well north of \$70,000 a year, so I find it hard to believe that that was actually what the offer of employment was. It's a public document. You can check. In coal, that provides that we pay for medicals, inductions and in-service training, so some of the evidence given there is somewhat inconsistent with what our practice is.

CHAIR: If you could take that on notice, it would be of assistance. Evidence regarding that matter would be a great deal of assistance.

I go to what's happened regarding mineworkers on sites and evidence we've received that they are paid 24 to 40 per cent less than direct mine employees and your permanent employees are paid a further 25 per cent less than a casual employee. In comparing your permanent employees to the permanent direct hire workers employed by the mine operator, does the pay gap then become around 50 per cent?

Mr Hockaday: No. Our evidence is consistent with evidence you've heard that the gap ranges. It depends on the classification. I know Mr Jones from Anglo gave indications from plus five per cent to negative 22 per cent. We're obviously not au fait with each of the mine operators' agreements. Some of them are quite complicated in how they operate. We're of course familiar with our agreements. We accept that there is a rate difference, but that amount can vary substantially depending on the role and the occupation category. I would struggle to think of an example where there's a 50 per cent pay difference.

CHAIR: There was evidence given by a number of the mining companies that their belief was that it was 24 per cent. There was evidence given by other parties saying it was up to 40 per cent.

Mr Hockaday: Without the facts in front of me, I'm not sure where the 40 per cent comes from. We would suggest it's closer to the 24 per cent number that the mining houses and the MCA have provided.

CHAIR: When bidding for contracts, obviously labour rate is a significant input into your costs. Is that correct?

Mr Hockaday: Yes, labour rates are absolutely a portion of our cost rates.

CHAIR: Would it be correct to describe it as a significant proportion?

Mr Hockaday: Yes.

CHAIR: If, for all intents and purposes, from one labour hire company to another, a mining company perceived those companies as being of a similar nature and similar capacity as labour hire companies, if the rate of pay for one labour hire company is significantly lower than for another labour hire company, wouldn't it seem logical that the lowest-paying company would win that contract?

Mr Hockaday: No, I don't think it's logical. Our customers are sophisticated purchasers and, as they've given in evidence, it's not always based on the lowest rate. We still need to be able to fill our contract commitments, which are basically to source, attract and supply people. Pay rates are a significant part of that in terms of attracting and sourcing people. If our rates are the lowest, we simply don't find people.

CHAIR: Mr Judge from Anglo American said, 'We would be unlikely to engage a higher-cost option than what you had by employing your own people directly.' Does that seem logical to you as well?

Mr Hockaday: It does seem logical, although that's a decision for the mining asset owners themselves in terms of who they procure to provide what service.

CHAIR: Thank you. Senator Small.

Senator SMALL: The previous witness touched on the fact that you might have some insight into the role of on-hire employment in terms of providing opportunities for those who are desirous of flexible employment, smoothing out the peaks and troughs of cyclical industries such that it turns into more secure employment. I think that is the premise of what he suggested you might have some insight into. Do you care to comment on that?

Mr Hockaday: Sorry, can you repeat the question?

Senator SMALL: No problem. I think the premise of the question really is: does on hire employment have a role to play in the economy in smoothing out peaks and troughs of project demand and other cyclical requirements such that there's actually more secure employment available to more people through the provision of on hire or labour hire services?

Mr Hockaday: I think that's a valid point. I know the focus has been on the mining industry, specifically the coalmining industry. The evidence has been that it represents, depending on whose evidence it is, between 10 and 14 per cent of the overall employee pool, if you like. I think it would be an interesting exercise to look at the growth in employee numbers over the last 10 years in mining. The growth of labour hire and contract employees over those times in gross numbers has probably been similar. I suspect that we and other contractors have played a part in fulfilling that surge demand in labour needs. We often move labour around to help smooth out those needs. When one asset is ramping down, for whatever reason, we're often called on to find large volumes of people work elsewhere in the country, and we do that.

Senator SMALL: In your submission you note that on average 10 per cent of eligible employees who are offered conversion to permanent employment actually take that up. I have two questions related to that. Firstly, do you see a trend in that number, either increasing or decreasing, over time? Secondly, do you see people electing to convert the other way—from permanent employment to casual?

Mr Hockaday: I'll answer your second question first. Ironically, we do have people who seek to convert back. There are not large numbers, but we do have some people who request to go back the other way. It is ironic

because under employment law they would need to resign from their permanent job and then basically take up casual employment.

Do I see a trend? Certainly over the last couple of years we've noticed an increase. Our conversion right in coal is pretty much automatic. If someone wants to convert, they're allowed to. We encourage that actually. We have given you some numbers around that. The trend has been quite steady in terms of people converting. It's roughly 30 to 40 people a month. That's where the 10 per cent comes from. We find probably about 80 per cent of people who do request it will actually take up the offer. I don't know about a trend. It's probably too early to observe.

Senator SMALL: Yes, sure. Do you see similar rates of conversion in other sectors outside of mining?

Mr Hockaday: No, we don't. That's probably because there haven't been automatic rights to convert in many of those industries. Awards and enterprise agreements have varying conversion clauses in them. The new amendments—and I know they're going through the commission at the moment—will help provide greater consistency across all sectors on those conversion rights.

Senator SMALL: Sure. In terms of cost to you as an employer, is there a difference between a permanent employee and a casual employee in a total cost sense? Once you factor in payroll tax, insurance, training and all the miscellaneous costs, from your perspective as an employer is there a difference and, if so, can you quantify it?

Mr Hockaday: No, there isn't a difference. Side by side, if a casual employee and a permanent employee worked exactly the same roster pattern and exactly the same hours over, say, a 12-month period, like for like, the total employment cost to us would not be more for a permanent employee. In some cases, it may actually be less for a permanent employee, because, in some sectors, depending on the entitlements, they don't add the loading, which can be up to 25 per cent.

Senator SMALL: Finally, I want to touch on the correlation, or the potential correlation, with respect to safety and the role it plays in this discussion. I note you've given some good insight there in your submission. Were your safety performance to decline, would your clients accept that?

Mr Hockaday: No. Safety performance is critical for us. It's invariably a key performance indicator in our contracts. Companies in our space, and any mining services contractor, can potentially lose contracts based on safety performance. So it would absolutely be a concern for our clients; it's often a point of review between us. If safety performance were to deteriorate for whatever reason, we would be taking actions or doing deep analysis into what the causes of that might be so that we could put strategies in place to improve it, not only for our people but across work sites in general.

Senator SMALL: Perfect. Thanks very much, Mr Hockaday.

Senator WALSH: I've got a couple of questions around casual conversion. You supplied us with some data—and you have spoken to us about that just now—around the relatively low rates of casual conversion when it's offered to casuals inside your own organisation. I just want to be clear that the casual conversion you're talking about is in fact internal to your organisation, as opposed to any kind of provisions for people to be converted to direct hire casual employment, where they'd be getting, as you said, a rate that's 20 to 25 per cent higher. That's correct, isn't it?

Mr Hockaday: Yes. The stats I gave you are on conversion from casual to permanent with WorkPac. That's correct.

Senator WALSH: Do you have any insight for us into how often WorkPac employees are offered permanent employment in the case of black coal, which we were looking at earlier in this inquiry, as direct hire employees?

Mr Hockaday: I don't have the data on hand, but I can certainly get that information for you. Absolutely. It certainly happens.

Senator WALSH: That would be great to get on notice. Do you have any insight into whether workers would be more likely to want to convert to direct hire casual employment than to convert to casual employment within WorkPac?

Mr Hockaday: I don't know. I guess that's a matter for the employee to decide. I know we have quite a loyal contingent of employees, and I know, reading some of the transcripts, Senator Roberts even spoke to one whom he met down in New South Wales. So we do have a strong contingent of WorkPac permanent employees who like working for us, and we manage their careers and find them work. I'm sure there's a proportion of people working for us that is hopeful that an opportunity comes up with our mine asset owner. Of course, given that they're familiar with the site and have potentially been working on the site and understand the safety culture and the systems of work—and I know Mr Jones gave evidence to this effect—they're in a prime position to apply for those roles.

Senator WALSH: In relation to casual conversion in general, you would have had to make yourself familiar with the federal government's new casual conversion provisions in the NES. How do you expect them to operate for you?

Mr Hockaday: We are currently looking through that. They take effect for us from 27 September. As I said, we have casual conversion rights in several parts of our industry already, so we intend to operate it exactly the same. We'll notify casual employees as their tenure threshold comes up and offer them the chance to express an interest in converting.

Senator WALSH: Is it your understanding that you, as the employer, have to agree to that conversion?

Mr Hockaday: There is an offer and an acceptance. There is a rate adjustment, obviously, because the value of the casual loading comes off, and the permanent rate is then a function of whatever industrial instrument they'll be employed under. There are time frames around that, and then there's the option for the employee to accept or reject that offer. If there are disagreements, then obviously there are arbitration steps. But we would certainly be of the view that, if circumstances meant that the permanent conversion was there, then we would seek to offer it to the person, and then it becomes their choice.

Senator WALSH: So it's your intention to offer the permanent conversion except on grounds where it's not there. Can you give us any insight into what the grounds might be where you don't think you'd be in a position to offer the conversion?

Mr Hockaday: I immediately think that the circumstance might arise where we're offering renews, for example, to ramp up projects. It might be, say, a two-year project or a 12-month project. It might be a construction or something, and we're supplying some people for that project. It might run for 18 months, and we get to the 17th month and a whole bunch of people want to convert from casual to permanent, but we know that the project is coming to an end. It would probably be reasonable then for us to say, 'Actually, this project is ending in a month. Apart from that, the only other work we have is in a totally different location to you.' In those circumstances, we think it would probably be reasonable to say no.

Senator WALSH: In the eventuality that there was a dispute over conversion, is it your understanding that both parties would need to agree for that to be arbitrated in the Fair Work Commission?

Mr Hockaday: I'm not across that specific detail of the legislation just yet, but we'd support the commission. Yes, we would agree to having that arbitrated in a commission environment.

Senator WALSH: There's been discussion around the pay gap, particularly in relation to coal but also other sectors as well, between direct hire employment and labour hire employment and there's been discussion in this inquiry about provisions for same job, same pay to remove that pay gap. How would that impact your business model given that I don't think you have agreed that the pay gap is the primary basis on which you seek to compete?

Mr Hockaday: On pay gaps and pay rates, obviously pay rates are established between an employer and their employees. Employees of the mining principal are obviously a different cohort of employees to our employees. As a contractor, just to clarify, our rates are on par with other contractors in the mining sector. All the companies like Monadelphous, UGL, Mader, Dawsons, certainly in Queensland, have labour hire licences and provide employees on an on-hire basis to a mine site. There are multiple facets to a mine's operation, so it's very simplistic to paint it into a one size fits all. Our rates are market rates. They compare with other market rates from other providers and it's on that basis that we compete.

Senator WALSH: So if the pay gap were taken out of the equation, would you just continue to compete for contracts and be on a level playing field with other contractors? Would your offering, apart from the pay gap, continue to secure your market share?

Mr Hockaday: It's difficult to hypothesise without knowing what the rules of engagement would be. But, yes. I would agree with that. We would operate with whatever the legal construct was, as we do now.

Senator CANAVAN: Thanks for the evidence. I just want to ask: how long has WorkPac offered a conversion from casual to permanent work?

Mr Hockaday: We have always had the option to convert people from casual to permanent and have done since our first agreement in 2007. Our latest enterprise agreement, which was voted on and agreed in 2019, contains an automatic right to convert. Prior to that, I guess, we could refuse on reasonable grounds. Our most recent agreement, which is now two years old, has an automatic right to convert.

Senator CANAVAN: Yes, that was what I was meaning. When I read the Rossato case, it did seem to me that he had worked a regular roster and he really was a permanent part of your workforce. Do you think it was a shortcoming, looking back on the industry, that such an automatic right wasn't provided before 2019?

Mr Hockaday: I'm not sure I would call it a 'shortcoming'. I mean, the previous version of the Fair Work Act actually contemplated long-term casuals and defined long-term casuals as casuals working regular and systematic work for greater than 12 months. It was a feature of the act. Effectively, if people wanted to convert—people didn't ask—we would look at it.

Senator CANAVAN: But I suppose people felt they might not be able to get that at the time. Before, you were saying you are getting about 10 a month now. Was that right?

Mr Hockaday: It is about 25 a month.

Senator CANAVAN: What were you getting before 2019? Do you have those figures?

Mr Hockaday: I don't have those figures but it would be much smaller.

Senator CANAVAN: Of the 25 a month you are getting, on average, how many are you refusing?

Mr Hockaday: We're not refusing any.

Senator CANAVAN: So since 2019 you haven't refused a single request?

Mr Hockaday: The grounds on which we can refuse are very constrained and linked to that example I gave before. If it's imminent that we have a contract coming to an end and we've had notice of that then they are the only grounds on which we may refuse. That's per as the EA; you can read it in there. I could get some stats, if you like, just to confirm that so I'm not giving any false information, but—

Senator CANAVAN: I think you said you don't believe you have rejected any. But maybe if you can take on notice if that's different. If there are some, you can come back to us about that.

Mr Hockaday: I can't think of any but I will come back to confirm it. As I said, we've had on average about 30 people a month apply. Once we give the offer back, on average 80 per cent of those accept that offer—25 out of the 30.

Senator CANAVAN: For those who reject the offer, have you looked into why they rejected it? Do you have the reasons why people ultimately decide not to go to permanent work?

Mr Hockaday: I don't have the breakdown of those reasons.

Senator CANAVAN: Alright. No problems. Do you have any further comments about why many of your employees prefer casual or are not requesting permanent? Do you have any qualitative or other evidence why that's the case?

Mr Hockaday: If you're working a 7-7 roster, which you tend to do—the predominant roster in coal—you're working seven days on and having seven days off. So if you were to take one whole swing off, seven days off, effectively you have three weeks of leave away from work, three weeks of non-working time. So I can only presume some people do the math and go, 'Well, I will take the higher rate of pay and I will save the money for when I want to take some time off instead of accruing a balance of annual leave as such.'

Senator CANAVAN: Are you saying that, if you're a casual in your workforce, in your workforce at least, you can still take time off? You just don't get paid for those periods. Is that generally the arrangement?

Mr Hockaday: Absolutely. You can have time off. In fact, many do. You've been essentially prepaid your holidays in your hourly rate.

Senator CANAVAN: Okay. My final question is on the pay gap. You mentioned your pay rates are similar to those in the broader labour hire field. What about for those who work on site or who work for the mining company itself? Are there differences between your pay rates and those of the companies?

Mr Hockaday: Yes, there are differences, definitely. As I said before, those differences can vary depending on the site. It can depend on the point in time you do that comparison as well. It very much depends on the role type. Yes, in some occupational categories, our rates of pay outstrip those of the asset owners themselves. In some high-demand roles, particularly roles in trades, in critical skills, our rates that we have on offer are in excess of what the asset owners are paying.

Senator CANAVAN: What are the reasons for those differences? Some of them seem quite large. From the anecdotal reports I get, there are quite large differences in pay for the same job. Why can that persist in a market situation?

Mr Hockaday: Why can a pay differential exist?

Senator CANAVAN: If you have a large differential in pay in a free market—if one is too low and the other is higher—wouldn't all the workers go to the higher wage one and vice versa if it was the other way around? What's allowing these large gaps to persist, where two people working the same job get different rates of pay?

Mr Hockaday: Your point with about a market is valid. It tells me the market rate we have on offer is appropriate to attract and retain people. We're still talking about rates of pay that are two times the national average. Numbers are thrown around; it's north of \$100,000 a year. When we do new entrant programs and the like, they start around \$80,000 a year. After 12 to 18 months, they can be earning \$100,000, \$110,000 or \$120,000 a year, depending on the role types. So it still has very attractive earnings potential.

CHAIR: Thank you very much for your evidence today, Mr Hockaday. It has been a great deal of assistance.

The committee, in its deliberations, will consider the answers you have given and the matters that have been raised. If you have taken questions on notice, please provide responses to the secretariat by 10 August 2021. Thank you again for coming to the hearing this morning.

Mr Hockaday: Thank you.

Proceedings suspended from 12:01 to 12:14

FLETCHER, Mr Duncan, Private capacity [by video link]

CHAIR: We resume and now with Mr Duncan Fletcher. Thank you for joining us. I note you haven't provided a submission. Information on parliamentary privilege and the protection of witnesses and giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I invite you to make a short opening statement, no longer than two minutes to allow time for questions. At the conclusion of your remarks, I'll invite members of the committee to ask questions. If you've prepared a longer opening statement, you may email it to the secretariat for incorporation into the *Hansard*.

Mr Fletcher: Thank you. I'm a partner of Kingston Reid, which is Australia's largest specialist labour employment and workplace safety specialist law firm. I appear today in my own capacity. I am not representing the views of the partnership or of our clients, but I'm representing my personal views as a practitioner of 20 years plus experience in labour employment and workplace safety. I believe that it's important to make a contribution to the process that the committee is undertaking to understand the concept of insecure and precarious work from the perspective of an individual who represents clients who are participants in the Australian labour market and regulated by Australia's employment regulatory framework.

From my perspective, there's an overriding question that the committee needs to grapple with, and that is to define and understand what constitutes insecure or precarious employment. One of the issues with precarious and insecure employment is that often the concept of what it is is frequently a subjective consideration in the eye of the beholder, and I think one of the goals of this process should be to define what actually constitutes insecure or precarious employment. Also, the process should not overlook the fundamental underlying principle that the most insecure employment is no employment at all, and I am concerned, as this comes off the constant waves of legislative reform over my 20 years of working in the area.

As a lawyer, I can probably argue that, in my practice area, I've seen more legislative reform than any other area of practice in the country as laws have changed over the years and I think it's very important that any reform that's considered in the area of precarious or insecure employment doesn't throw the baby out with the bathwater, in the sense of fixing a perceived problem but, as a general concept, actually undermining employment. The analogy I would use is that, at the moment, we have a labour market which is a little bit like a patient who's gone into surgery for a heart condition. They've been operated on and they're currently under sedation, and that sedation takes the form of all of the government money that's flowed into the economy to keep jobs alive. My concern is that, in the interests of pursuing a noble agenda of making work more secure, we don't undertake other operations on that patient that are not necessary. It would be a tragedy to see us chop the patient's leg off during the operation in order to make the patient lose weight. I use that rather colourful analogy to point out that the ends must justify the means.

I think there are three key goals in this process. First, employers must have certainty. Employers will respond to the cost impositions of having flexibility in their engagement of employees where the model allows them to understand what those costs are. In that regard, I point to the WorkPac litigation where, for a noble cause of obtaining certainty about engagement of casual employees, the unintended consequence of people effectively being paid twice for doing the same thing is an outcome that has put huge amounts of financial pressure on many employers. I don't think that is appropriate. Employers will cop reform as long as they understand what it costs so that they can build the costs into their business model.

Second, employees should have genuine freedom to choose. Many employees are not willing or wanting to take up traditional forms of Monday to Friday, nine to five employment. Many workers are interested in other forms of engagement and have embraced those other forms of engagement. Whatever reform is undertaken needs to embrace the fact that these individuals should have genuine freedom to choose.

Third, and this harks back to what I said at the beginning, improving the status of insecure or precarious employment for those in employment must not—as an absolute rule must not—result in the destruction of jobs or imposition of additional regulatory burdens that force employers out of business and cause jobs to be lost.

CHAIR: Thank you, Mr Fletcher. Over to you, Senator Canavan.

Senator CANAVAN: Thank you for your evidence, particularly given your experience in this sector. You mentioned, or I think you implied, that there have been a number of changes in the industrial relations landscape, and that perhaps it's not the right time to do more radical surgery. Can you be more specific about what are some of the changes or aspects of industrial relations law that are particularly complex at the moment or will take time to work through? Does that mean we shouldn't make too many radical changes right now?

Mr Fletcher: Probably my biggest concern is the concept of what I might describe as industrial plaque. Industrial plaque, a little bit like dental plaque, is practice and condition that is built up over time which imposes

an ongoing burden on employers that prevents them from acting in their own best interests and often in the interests of their work force. I will use a simple example. I've worked with a number of clients over the years who have, over the course of enterprise bargaining, baked extremely generous redundancy provisions into their enterprise agreements. Those very generous redundancy provisions, which go well beyond the safety net standard in the National Employment Standards—for example, four weeks per year of service uncapped—are items that have been baked into enterprise agreements over time and effectively have become a flaw for those agreements. I fully appreciate that employees and unions representing employees don't want to sacrifice hard-won gains, and that's why, as a concept, enterprise bargaining, and even award changes, tend to add to the baseline of regulatory obligation rather than necessarily trading off new ways of working or new ways of paying people. In relation to redundancy, as an example, during the pandemic I found a situation, which I thought was bizarre, where a combination of extremely high redundancy costs—three weeks per year of service uncapped; four weeks per year of service uncapped—created an enormous financial burden, sometimes a business-destroying financial burden, on any kind of restructuring or adjustment of the work force. As a result of that, I saw many organisations during the pandemic effectively frozen and unable to act in any way to restructure their business to get on with things. That, combined with the addition of JobKeeper and other stimulus and support measures, meant that employers became necessarily dependent on those supports at a time when they needed to reform their business. In the example I give of those employers with large redundancy costs, they're unable to move.

Any reform that's considered in the area of insecure or precarious employment should be targeted, and targeted towards exact areas of need. Avoid a situation that adopts a one-size-fits-all 'these will be the rules for everyone' stance, because those rules may set the bar artificially high for businesses and put them in a situation which is untenable. If broader reform is needed from this point forward, then there needs to be an ability to trade off some of those historical legacy factors, like extremely and untenably expensive redundancy, as a balance to any focus on insecure or precarious employment.

Senator CANAVAN: Thanks for that. I want to ask about a particular issue. We've been dealing with issues around the gig economy, especially Uber and DoorDash and those sorts of companies. I don't know to what extent you've had any experience with these, but there has been a suggestion made to us that there needs to be at least a third way, a definition of an employee and an independent contractor to capture people in such categories. Do you have any particular views about the appropriateness of existing industrial relations law to deal with these relatively new forms of employment or contracting of services?

CHAIR: Sorry, Mr Fletcher; my apologies. I just remind everybody to keep their systems on mute while someone is speaking, because we're getting feedback.

Mr Fletcher: I do believe that the current system—in adopting a cookie-cutter approach to new business form and establishing or trying to rope new business models, like the ones that you mentioned, into the existing award system or the existing award structure—is dangerous and runs the risk that those business models may not be viable.

I am supportive of what you described as the third way. My view is that that third way needs to be more than just an award system by another name or a cookie-cutter of existing arrangements. Attempts in the past to regulate other models of engagement but look at it through the prism of, 'We need something that we won't call an award but effectively is an award,' were problematic because they were just a name change. They were not actually a change to the fundamentals of how people are engaged.

From my perspective it should be looked at across all areas of government and regulation. If there is going to be a third way, that third way should necessarily embrace tax reform. For example, it surprises me that the tax system takes a very rigid view of how a person's personal effort is taxed. I think there are opportunities for trade-offs for allowing people—and I come back to my point about choice—to make a choice of how they are engaged. For example, maybe the quid pro quo of a person having statutory confirmation that they are a contractor is being treated as a contractor, as in a corporation, from a tax point of view. At the moment personal effort income is taxed at the full personal income rate. Perhaps if there is to be a third way, it's a third way that embraces all areas of regulation and is not an adjunct or some kind of copy of the system that's in place for employment.

Senator CANAVAN: Thanks very much for that.

Senator WALSH: Thank you, Mr Fletcher, for being here for us today. I want to start with your general appeal to the committee to try to characterise what insecure work is. I'll give you the flavour of some of the evidence that we've had from people who say that they are in insecure jobs. As you'd be aware, we've had a bit of a focus on the mining industry. Back in the 1990s in the order of 94 per cent of people were directly employed by the mines and now it is just 50 per cent. People are increasingly employed as labour hire casuals, as you would know.

We heard some evidence yesterday from a group of workers who didn't wish to go on the *Hansard* record, so they were in camera. The reason they gave for that was concern about the potential to be blacklisted by the labour hire companies. These are just some of the things that they said: they were hired by text message; they were given rates of pay in that initial engagement text that were higher than what actually occurred on the ground when they got to the location; and they were unable to leave the location without the assistance of a flight from the company and, therefore, had to continue with that contracted employment at the lower rate. There were lots of other things around costs that have been shifted from the employer to them, like paying for their own inductions, training, tools and those sort of things. There were statements about what it's like to be always on the lookout for work and the fact that it is true your income overall can be pretty good, but it's hard to prove that when you're trying to enter the housing market. Finally, we heard some pretty tragic evidence around the rates of suicide of people who were engaged in these sorts of arrangements. I wanted to get an initial reaction from you about whether that sort of employment would meet your definition of insecure work.

Mr Fletcher: Thank you, Senator, that is helpful. The first comment I'd want to make is the mining industry is not a generic industry. I would argue that, in terms of the statistics that you quoted, we do need to be careful with those statistics because not all contractor arrangements in mining are labour hire arrangements. In fact, labour hire across mining is nowhere near the level of 50 per cent. The 50 per cent you're talking about, based on my understanding, would include what you may call mining contractors, so contract miners. They are very big companies that operate workforces that are, in a sense, whole employers across a site that employ thousands of people on a conventional full-time basis, and not labour hire in the sense that you've described it. I come from Western Australia, and my practice is heavily focused in Western Australia. I do do work in the other states—Queensland, particularly—so I am aware of the distinctions between coal and metalliferous mining, certainly metalliferous mining in Western Australia. My experience with metalliferous mining in Western Australia is that labour hire is by no means the dominant form of engagement and it actually makes up a very small per cent of the engagement. Where there is non-direct employment, that non-direct employment is usually through a large-scale contract miner, so a company that works an entire mine site under contract to the project owner and, for all intents and purposes, is a conventional employer with conventional employment arrangements. That's the first thing that I would say.

In terms of the examples that you've given, I agree that they are terrible occurrences and need to be addressed. But I don't think that the problems you've identified would necessarily be fixed through structural change to the rules under which people are engaged. I don't think any of the issues that you mentioned—things like blacklists, misrepresenting in terms of engagement, undermining people's ability to be paid according to the appropriate standards—are necessarily solved through structural change to the workplace relations system. I think those problems are probably better solved through better resourcing of the Fair Work Ombudsman because almost all of the examples you gave would amount to breaches of the current legislative framework and could give rise to prosecutions by the Fair Work Ombudsman. So it's a question of how the enforcer is resourced, rather than changing the rules that they are enforcing.

Senator WALSH: I think we've had fairly considerable evidence that these are the sorts of employment arrangements that can occur in the labour hire industry, and perhaps more often than they occur in direct employment arrangements. I might just take you to some of your own commentary on the issue of labour hire. You wrote an article through your law firm's website titled 'Secure jobs: For who and how?' and made comment about the proposed 'same job, same pay' principle. You wrote:

This will likely have a significant impact on the future viability of the labour hire industry and employees who work in it.

Does that mean that your position is that the labour hire industry is only viable if the workers are being paid less than permanent employees doing the same work?

Mr Fletcher: No, that's not my view. My view is that any move to introduce a 'same job, same pay' concept into the fabric of employment regulation necessarily undermines the ability of contractors to put an alternative model forward. There are many different ways that you can pay an employee. You can pay an employee on the basis of base plus overtime. You can pay an employee on the basis that they're engaged as a casual and that they're paid a loading but that their flexibility comes at a cost. And I'm a great advocate of what might be called the 'daily hire' employee, which is a common feature of the construction industry, who is recognisably an employee who is flexible, and can come to work as and when required by the employer, but, under the building and construction award, that individual receives a higher payment in recognition of that flexibility.

Flexibility, in terms of when you can provide people to perform work, is not about the cost of the job. Flexibility is about the availability of the person to fulfil the peaks and troughs in the demand for labour. For example, in a shutdown situation, there may be a need to mobilise 500 metal tradespeople for a peak of work that

will happen over a short period of time. In that situation, you want the ability to engage a large number of people for a short period of time. That is not possible on a nine to five, Monday to Friday type of engagement, because it may not be possible to engage that number of people at one time. So my concern is that the notion of 'same job, same pay' is dangerous, because it assumes that everything is generic—and it's not generic. There should be situations whereby an employee of a contractor can be paid more in exchange for being flexible.

And this goes to my point about what constitutes insecure work: there are a lot of people in the workforce who want to get paid more to work for shorter periods of time. And, certainly in the mining industry and in the Western Australian mining industry, that has manifested itself through compressed rosters and other factors. So my concern is that a simple policy position of mandating 'same job, same pay' has flow-on effects that can be damaging for the viability of business models when the 'same job' isn't the same job. If there were controls to make sure that it was absolutely the same job then maybe that concept would work, but my contention is that labour hire is used for the exact reason that, on an overall, holistic basis, the job is not the same job.

Senator WALSH: It seems, on the evidence that we've had to this inquiry, that there is a structural pay gap in the base rate of pay for standards operator jobs in certain sectors. There's a 20 to 30 per cent gap—some say 40, but let's say 20 to 30 per cent—in the base rate of pay for operator jobs in mining between direct hire and labour hire. If you removed that structural gap in standard base rates of pay for standard classifications like that, wouldn't it have a positive impact on requiring labour hire companies to compete on the basis of other offerings? For example, I noted you talked about operating in your practice in the area of workplace health and safety. Would that be the type of competitive advantage that labour hire companies might need to explore if you remove the structural gap of the 20 to 30 per cent pay differential?

Mr Fletcher: I don't think it's that simple. The difficulty is that many operational businesses work on a base-plus model, particularly in coal, where there has been a tendency to stick very closely to this notion of a 36-hour week of ordinary hours with overtime built on top of that. The concern I would have is that doing what you describe as a base rate comparison is extremely difficult, particularly because a labour hire company usually needs to be a little bit agnostic in terms of the way its employees are remunerated. If you're a labour hire company and you're working for mining companies X, Y and Z, those companies may all have different requirements about how and when you work. If, as a labour hire company, you've got a flat rate of pay, and that has built up all of the overtime based on particular rosters, operations, requirements or working hours, you might be competitive and work fine with client A, but if client B has different rosters and different ways of working, and you've built up your rosters and payment structures on the basis of client A, you run the risk of going out of business because you can't meet the requirements of contractor B on that built-up rate.

I think the base rate difference that you're noticing—and this is definitely the case in metalliferous mining in Western Australia—is because most established operational miners like the notion of a flat hourly rate of pay. That flat hourly rate of pay is extremely generous, and usually builds in all the overtimes and loadings plus a bit extra to allow a flat hourly payment. In my experience, the labour hire companies tend to work on more of an award based situation, where they start with a base rate which is a lot lower than the flat rate the operators are paying and then build up from there.

Senator WALSH: I do understand what you're saying. What is the challenge with a labour hire entity being required to match the pay structure of the host company?

Mr Fletcher: The difficulty is that the host company will have developed their pay structure through extensive enterprise bargaining. The whole point of enterprise bargaining is for enterprises to be unique and have conditions that suit the enterprise. The problem with having to match the host company is that there are a lot of intangibles—and tangibles, indeed—that don't match the situation the labour hire company is being asked to fulfil. Labour hire companies are often being asked to fill gaps and address problems, and a like-for-like on what they're offering is problematic because the industrial regulation that applies to them is difficult for them to adopt. Coming back to my concept of choice, if there were an ability in the legislation for a labour hire company to opt in to the host employer's industrial arrangements but also get the protection of no strikes and other benefits that come from having an enterprise agreement—an option-in model—that would be fantastic, because then they would have the choice. The concern I have is that a mandated 'you must pay exactly the same as your host employer' creates other risks in terms of the way that those businesses operate. Once again, it comes back to the golden rule with industrial relations, which is that, if you give employers and employees choice so they can freely decide what to do, that works a lot better than imposing an outcome, because, if you impose an outcome, employers will find another way of doing what they want to do, which then creates unintended consequences.

Senator SMALL: You've made a number of good points on the risks of the sloganisation of IR, such as with 'same job, same pay'. Can I ask whether, in your view, reform in aid of a same job, same pay policy would put at risk the whole concept of enterprise bargaining that Labor have championed for decades?

Mr Fletcher: Taken to its logical extension, it produces a very generic world. If we look back historically—and this is where the pandemic is a risk, because the pandemic is not dissimilar to the postwar experience—governments of both persuasions since 1980 have reformed the system to address some of what I called before industrial plaque or baked-in cost burden that comes as a result of a situation where the economy is going very well. In circumstances where unemployment has just dropped below five per cent, I worry that, while things are going well, if we genericise how people are engaged and we have one size that fits all, the long-term structural impacts of that, once the pandemic is over and all of the government money has drained out of the system, will be that we may end up in the situation that we were in in the 1980s, where we were trying to degenericise regulation. Generic workplaces are a peril that we should avoid.

Senator SMALL: Thanks for that. In terms of the two principles that you outlined earlier, with employer certainty and employee choice underpinning a successful IR landscape, can I ask you to comment on the word 'flexibility', because it has attracted such a negative connotation, yet so much of what we've seen come through from worker surveys in the gig economy and, indeed, from your evidence this morning supports the concept that pay is not everything to modern employees and workers who are seeking to fit work around life, not life around work, as one of the earlier witnesses nicely put it? I'm interested in your views on that.

Mr Fletcher: The pandemic was a surprise. Albeit with considerable government support through JobKeeper, the pandemic has actually fast-forwarded, if you like, the embracing of non-traditional working models and people moving outside the conventional 38-hour, Monday to Friday week. I also have the view that flexibility is an unnecessarily dirty word. It's used by many to denigrate employer sentiments, in the view that flexibility is akin to treating workers poorly. I disagree with that. And this is not a case of, 'Take it or leave it; it's a job or nothing.' What I've noticed is that employees are embracing flexibility. I was a bit disappointed with the fact that some of the reforms the government was trying to introduce last year stalled in the Senate, because that would have introduced this notion of non-financial benefits to the individual as a driver for what constitutes a fair arrangement. I would love to see a more subjective test of what constitutes flexibility.

I appreciate that we need to have a safety net. We need to have a structure that prevents people from falling through the cracks, but, in terms of the way people want to work, if we look at our system of employment, all of the overtime, penalty and other arrangements that have been developed over the years are built on a postwar concept of a Monday to Friday, 38-hour week, with time and a half on a Saturday till 12 and double time for the rest of the weekend so that you can go to church on Sundays and enjoy a public holiday when that comes around. It's a little bit similar to the old long service leave example. Long service leave was introduced to allow colonial officials to have a break and a sabbatical and get back to England. So the time period for a long service leave break was calculated so as to allow the sail back to England, a short break and then a sail back to the colonies. That kind of historical, baked-in concept, I think, needs to be revisited in terms of what actually motivates people and what people really want from their workplace. Do they want to be able to work on the weekend so that they can have time off during the week? Do they want to work at night so that they've got time off during the day? I think this is where we've got to be careful about the definition of what is and isn't insecure or precarious employment.

Senator SMALL: You said earlier that the most insecure job is no job at all, and I think that's a profound observation in some ways. Is there an international best practice that you draw the attention of the committee to in respect of workplace reform that aims to embrace flexibility and preserves the best elements of what modern workers are desirous of, as we move forward?

Mr Fletcher: No. I do think that our approach needs to be uniquely Australian. And, in terms of international models, it's more about what to avoid than what to embrace. It's interesting. People often talk about the United States as being a 'let the market rip' sort of environment, but, having been part of a global law firm a few years ago, my experience was that that's not the case. In the United States, actually, the problem is differential regulation across different state jurisdictions, with some states being incredibly restrictive—California being an example—and other states being much more liberal in the approach that they take to engagement. So I think the lesson from the United States is that we're going down the right path by having a single national system, and we need to make sure that safety nets are strong but that individual engagement is left to the individuals that participate in the workplace relationship.

I also think we need to really be careful about ending up in a European situation. I'd use France as a good example of this, where things like mandated minimum and maximum numbers of hours and other factors really

throw the labour market out and, I think, have the potential to undermine beneficial outcomes for employers and employees. Some reform in the UK, I think, is interesting to look at. In that regard, I would point to—and this is a bit left of field—the ability in the UK to more readily address that industrial plaque that I mentioned by actually engaging on the basis that enterprise agreements are not set in stone, that they can be reformed, and that that process is not a 'yes or no, do or die' concept. Rather, it's a concept where employers and groups of employees can find their own flexibility, almost, within the enterprise's flexibility. In that regard, I think there's a lot of work for individual flexibility agreements to do. The individual flexibility agreement is an invention of the Labor Party, and it's a very good invention of the Labor Party, but it's something that I think, in terms of looking at flexibility and the goals of the individual, is a very fertile area for the type of reform that this committee is looking for. An individual flexibility agreement needs to be embraced, and I think part of the problem is that, on the Labor side, it's viewed as a little bit too close to the AWA, or Australian workplace agreement, that it replaced, so it has got a stigma. And, on the Liberal side, it looks a bit ineffectual because there are too many hurdles to putting an IFA in place. I think, for future workplace flexibility, the IFA is the future.

Senator SMALL: Thanks for your insights.

CHAIR: I have one line of questions I want to ask regarding some of the comments. I listened with a great deal of interest to your metaphors, using some of the dental and medical descriptors of plaque, which I think you described as industrial plaque and you said it shouldn't be set in stone. Industrial plaque could also be described as something protecting the teeth separately, where workers have rights. So what you're really saying is that workers should have less rights to collective bargaining for minimum standards across a business or an enterprise—and I mean 'collective'. Secondly, I want to ask you what medical metaphor you would use for gig workers receiving—as we've received in evidence—as little as \$6.70 an hour or labour hire workers getting paid 24 to 40 per cent less than the direct employees, in this case on mine sites, who are doing the exact same job. What's your medical metaphor for that one? I would say it's heart disease.

Mr Fletcher: I'd need some time to think of a metaphor. I'm happy if you want to invite me back, and I can think of something. To your point about what I would describe as hard-won gains, I completely support the need for enterprise bargaining and I completely support the need for employees to bargain collectively. There's no problem with that at all. The comment about plaque is really focused on things that are anachronistic and don't reflect the way the workplace operates at the moment. They've become baked into industrial arrangements, and are held onto as articles of faith just for the sake of it, rather than them being absolutely necessary. The example I often give is the spectacle allowance or the cardigan allowance. What I'm saying there is that it would be great if there was an ability for some of that stuff to be traded off. I'm not saying trade it off for nothing. I'm saying have a cost attached and have that cost be recognised, but allow employers and employees to work differently. In that regard, I come back to the daily hire concept, which is a very certain way of engaging a casual, where all of the costs are known in advance and the nature of the engagement is known in advance. Where that happens then both parties are happy. My experience is that employers are happy to pay the cost, as long as they know what the cost is.

CHAIR: Thank you very much for your evidence today and also for having taken this time out. We will take your evidence into consideration in our deliberations for the final report. If you have taken any questions on notice, please provide responses to the secretariat by 10 August 2021. Thank you, Mr Fletcher.

Mr Fletcher: Thank you, Chair.

CAMERON, Mr Kevin, Head of People, Programmed [by video link]

FAIRBANK, Mr Nicolas (Nic), Chief Executive Officer, Programmed [by video link]

[13:06]

CHAIR: I now welcome Programmed representatives. Thank you for joining us. I note that Programmed has not provided a submission. Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I now invite you to make a short opening statement of no longer than two minutes, to allow time for questions. At the conclusion of your remarks, I will invite members of the committee to ask questions. If you have prepared a longer opening statement, you may email it to the secretariat for incorporation into *Hansard* and for members of the committee to peruse.

Mr Fairbank: As you may be aware, Programmed is a large employer with a specialisation in the delivery of our employees to industry. The idea is that we assist with output and productivity of organisations, both large and small. We recruit, deploy, manage and train more than 35,000 people per day to more than 10,000 customers across industry. Programmed is known for its position on safety, having developed successful initiatives and policies on young worker programs and also on family and domestic violence. Over the past few years alone, more than 8,000 incidents have been reported. As a result, when we are required, work practices are re-engineered with our customers to assist in safer work outcomes. From a family and domestic violence perspective, we have been able to assist many families and individuals continue to work, knowing they are well supported through difficult times. This is for employees engaged both on a casual and a permanent basis.

When COVID-19 arrived, Programmed was one of the first organisations to implement an isolation payment scheme for our employees engaged on a casual basis. Also, importantly, we were able to work with companies to redeploy people who had lost their jobs and/or had been stood down for a period of time so as to help ensure, wherever possible, individual and family incomes were not too impacted. We did this for both casual and permanent employees. Programmed is indeed proud of the value that we contribute to industries for employment and training. Most importantly, we are supportive of permanent work, but we're also supportive of freedom of choice and like the idea that individuals, if they wish to, can maintain and be maintained to work on a casual basis. We thank you for the invitation to be involved this morning and look forward to the questions.

CHAIR: Thank you very much, Mr Fairbank. I'll go straight to questions. Yesterday there was evidence about software called ERM. Are you aware of that? It's used to maintain a permanent record of workers in the Western Australian resource sector? The company also goes under other names like Bright People Technologies or Cited.

Mr Fairbank: No, I'm not. Kevin, are you?

Mr K Cameron: No, I've not heard of that.

CHAIR: I won't ask you questions on that matter then. For the public record, there's a document the secretariat has circulated which I now seek to table. It is a programs report to the Workplace Gender Equality Agency. That report shows, in tables on pages 6 and 7, the proportion of your employees who were engaged in various forms of work. Of 21,516 non-managerial employees, you had 3,750 permanent full-time employees, and the other 17,766 were mostly casuals with a small number of fixed-term and part-time staff. That is, as I understand, 83 per cent were in insecure work arrangements. In some sectors it was worse, and in community and personal services, which included aged and disability care, you had 210 casuals and 12 permanent staff, a 95 per cent to five per cent casual to permanent ratio. For labourers, which would include most in resources and construction, I suspect, you had 15,178 casuals and 438 full-time permanent—that is, more than 97 per cent casuals. Are these proportions still largely the same as they were in that 2017 report?

Mr Fairbank: There have been some fluctuations through COVID, of course. But, broadly speaking, that's correct.

CHAIR: I want to look at the issue of black coal, specifically. Your subsidiary TESA provides labour hire mineworkers in that sector to miners including BHP. Is that correct?

Mr Fairbank: That is correct.

CHAIR: Based on the numbers I just cited, they would almost be entirely casuals?

Mr Fairbank: Yes, as a percentage, that's correct.

CHAIR: What is the pay your casuals receive compared to what is received directly by employed mineworkers on those sites?

Mr Fairbank: We did discuss this last year also. There is a difference between the pay. Kevin may be able to give exact figures. Our pay is negotiated directly with our employees through a ratified agreement, and I'm presuming that the pay for the miners is negotiated through their own agreement. They're two separate matters, of course. Kevin, would you like to contribute to that?

Mr K Cameron: No, except that we concede that there is a difference between the money that the in-house employees get in their negotiated enterprise agreement and in ours. I don't think that's news to anybody.

CHAIR: We heard similar claims from One Key and Chandler Macleod last week about their casual mineworkers not wanting to become permanent. We were clear they were talking about becoming a permanent employee of the mine operator. When we're talking about remaining employed with Programmed or TESA and taking a further 25 per cent pay cut on top of the 22 per cent to 40 per cent, which I understand is the rate differential, isn't that a matter of concern?

Mr Fairbank: Again, this point has been discussed at length and for good cause. They're important matters. On the point of permanency, though, I don't believe that's 100 per cent correct. The evidence that we have is that, in some cases, people, where invited to, are quite happy to become permanent employees with us. It's just that the vast majority, for their own reasons, self-select to remain employed on a casual basis. I think that's okay. Whilst we're on record of supporting permanency and conversion to permanency, we're also highly supportive of freedom of choice and the flexibility that goes with it.

CHAIR: If a worker is receiving a 25 per cent loading, regular rosters, regular shifts, month in, month out, even year in, year out, and if they became permanent their income would be reduced by 25 per cent, they don't want to become a permanent with a labour hire company, but they do still want to become an employee of a direct-hire company. That's the evidence we've been receiving. At one point in the nineties close to 96 per cent of all employees were direct hire. The evidence we've received is that it's because of the differential of between 24 and 30 per cent between what mine operators pay and what's paid by labour hire companies to do the exact same work, side by side. Isn't there a disincentive to become a permanent employee for a labour hire company in that circumstance? It doesn't happen in all circumstances. I appreciate the very low figures of permanency you've got, but some do decide to become permanent.

Mr Fairbank: That's true. They do. I think, given the changing environment over the last 18 months, there is potential for some shift in the numbers there also. More broadly, though, the coal sector is one part of industry, of course, and we've already said there is some disparity in pay. But enterprise agreements are negotiated at a point in time. I think we have to recognise that. I think some evidence has already been given that, during boom times and less buoyant times, rates are negotiated according to those economic environments. That's relevant. I don't feel that it's entirely correct to draw that one comparison all the time, because enterprise agreements are also negotiated at different times, aren't they? On your reference to the nineties and permanency with the miners, yes, that is true, of course, but industry globally has also changed significantly since then. It's changed because of market demand, and I don't think we should be dismissive of that either.

CHAIR: Due to time, I want to turn to another matter. The aged-care royal commission final report stated that 12 per cent of residential-care workers and 11 per cent of home-care workers were on a permanent full-time contract and that the rest were on casual, fixed-term or part-time contracts. We've heard that care employees are almost entirely casual. The royal commission raised concerns that aged-care workers are not receiving fair wages and conditions and that this in turn impacts the quality of care provided. Recommendation 87 of the royal commission was to require that providers preference the direct employment of aged-care workers. As a provider of aged-care labour, do you support that recommendation?

Mr Fairbank: Yes, I think we do. The point on pay is relevant, and again these are conversations that are being had. I don't feel that the engagement of people on a casual basis is necessarily the issue. In the aged-care sector pay has to be looked at. As a country, if we're going to attract and then sustain people in that form of employment, we have to recognise that pay needs to be a little more supportive of the work that's being asked of them.

CHAIR: Thank you, Mr Fairbank. I'll go to Senator Canavan.

Senator CANAVAN: Thanks for your evidence this morning. Can I ask about your arrangements for the conversion of casual to permanent staff. I realise I've got your numbers, but, if someone in your workforce seeks to request a conversion to a permanent role, what are the arrangements under your enterprise agreements and how do you approach that from a corporate perspective?

Mr Fairbank: I will hand our response to Kevin Cameron who's more directly involved in that process.

Mr K Cameron: We actually, as a business, encourage conversion for our casual employees. If we just go back, it's interesting. In the black coal industry in the Hunter Valley we have 989 employees as of today, and 274 of those are permanent, 153 of those are trainees and the balance, which is 562, are casuals. Since 2018 we've had 508 people wish to convert to permanent employment, just in the black coal space in the Hunter Valley. We've accepted 428 of those, and we anticipate that over the upcoming months we will be converting another 49 as we currently have those applications in front of us. As an organisation, we like to convert people if the possibility is there. There are always some circumstances where it's not possible, but, in the main, our approach is to attract a permanent workforce, or a greater permanent workforce than we currently have, so we look at casual conversion very positively.

Senator CANAVAN: Running through those numbers again, you said 508 requests. Did you say 429 or so are approved?

Mr K Cameron: Yes. I said 423 are approved.

Senator CANAVAN: And 50 or so are still being processed?

Mr K Cameron: Correct.

Senator CANAVAN: That leaves around 30 or 40 that requested but did not convert. What were the reasons for not getting conversion to permanent work for them?

Mr K Cameron: There would have been a number of reasons, and they would have arisen from suitability, performance—I couldn't tell you specifically, but there would have been a variety of reasons for it. It might have been that we just didn't have a permanent role at that particular point in time.

Senator CANAVAN: They were rejections by you, were they? They weren't the employees having second thoughts?

Mr K Cameron: No. They would have been rejections by ourselves in most cases.

Senator CANAVAN: For the 508 who have been doing this, what are the arrangements in your enterprise agreements to allow for that? You obviously do have some capacity to say no, but is there a standing provision in the enterprise agreement that allows for conversion, or is this outside the framework?

Mr K Cameron: No; there is a clause in our enterprise agreements that allows for conversion, and it's conversion after six months, off the top of my head, and it's basically an employee making an application to convert. As I say, once they make that application, in the majority of cases they are able to convert.

Senator CANAVAN: With the new laws coming into place, does that change what you have to do at all, or is your enterprise agreement, in your view, compliant with the amendments that expand conversion to permanent work across the economy?

Mr K Cameron: Certainly in the colliery, which we were just talking about with those figures, our conversion clause is probably a bit more superior to what the new National Employment Standards are. In other industries across our business, the National Employment Standards will provide more generous benefits than previously existed—absolutely.

Senator CANAVAN: Just going back to Senator Sheldon's questions about the pay gap, what year was the enterprise agreement that you have with your workforce, which was under examination here, signed in? Do you know that?

Mr K Cameron: No. Again, in the coal industry—is that what we're talking about?

Senator CANAVAN: Yes. I think you were talking to Senator Sheldon about the situation where coalminers under your enterprise agreement are paid less. Correct me if I'm wrong, but I believe you admitted that they are paid less. I think a BHP mine might have been mentioned in particular. So that agreement that gave rise to that pay gap—do you know what year that was signed in for your workforce?

Mr K Cameron: There was one signed in 2017 with one entity, and I believe another entity signed one in 2018. At the moment, we are currently negotiating the one that was signed in 2017.

Senator CANAVAN: You might not know this, but what year was the agreement signed that presumably had BHP or the mineworkers being paid more? Do you know?

Mr K Cameron: No, I couldn't tell you that off the top of my head.

Senator CANAVAN: You suggested before, or one of the witnesses suggested, that some of these pay gaps could be due to the time that they're struck, the different times of the cycle. Does that at all explain the differences in this case? Do you have any evidence for that?

Mr K Cameron: I don't have evidence for that. That may be part of the reason, but it's not something I've looked into.

Senator CANAVAN: Okay. Thanks, Chair.

CHAIR: Thank you very much, Senator Canavan. Senator Small, would you like to ask some questions?

Senator SMALL: Thanks, Chair. Good morning, gents. My camera is off because my internet connection is a bit dodgy. One of the things we have been talking about this morning is this idea that, increasingly in the modern workplace, employees and workers want to fit work around life, rather than fit life around work. In your dealings with a very considerable number of employees, what role does this desire for flexibility play? Is pay everything in the eyes of modern Australian workers, in your experience?

Mr Fairbank: There has certainly been a shift—I would say it has been over a 10-year period—where the want for greater flexibility in one's work life has increased. That has been compounded through this period of COVID, and that has already been well documented through different institutes. In terms of casual engagement and pay, I believe flexibility is a strong motivator for people. What we're seeing now is people recognising that they can have a great deal of flexibility in their work that supports the way they want to live their life, which is dramatically different to the way we started work and the way our parents' generation started work as well. We all have to be realistic in our views of how people view their working lives and what they want from it. That certainly goes much further than just pay.

Senator SMALL: Brilliant, thanks. To explore one of the slogans which runs a bit counter to that, 'same job same pay' is obviously something we have been talking about extensively in this inquiry. How would you see 'same job same pay' reform playing out in the lived experience in the workplace? Obviously, this is from your perspective as a business employing a very significant number of people.

Mr Fairbank: 'Same job same pay' feels like it's a nice line. I am concerned about the practicality of that in trying to get industry to fit into a particular system of thought. I think that is problematic for Australian industry. In what we see as an organisation, with the tens of thousands of people that we employ, the feedback that we get is that it's not a determining factor. I don't subscribe to this idea that we have thousands of people complaining about what they're paid, whether it be in the coal sector or in transport logistics or in manufacturing or in construction. As I said before, perhaps in some parts, like in aged care, greater work needs to be done in certain areas.

The average salaries in Australia—those engaged on a temporary basis, a casual basis or on a permanent basis—are world leading. In the coal sector, where we're paying people \$127,000-odd a year—the average salary is \$86,000, taking into consideration all salary bands—people are not ringing us to complain about their pay. They complain about other things, of course, but pay is not one of them. Without taking too much time here, my honest view is that we are oversimplifying something or creating an issue, if you like, that doesn't need to be resolved. That's based on the feedback that we get.

Senator SMALL: I'd like to explore that. It's important to make the point that this conversation is taking place in the context that the most recently published unemployment rate is at 4.9 per cent, and the participation rate is at a record high of 66.2 per cent, so there are not vast lines of people queuing up for jobs. Indeed, employers around the country are constantly in the media talking of skill shortages in various sectors. What is your experience of turnover rates and the need to be attractive as an employer to secure applicants in the current work environment, notwithstanding that we're going through a global pandemic? Context is important here.

Mr Fairbank: Certainly there is a mini jobs boom across industry, particularly in the heavier engineering sectors, as well as some others. As an example, as of this morning, we had 2,018 open jobs for industry across sectors. There is a skill shortage. That is a cold, hard fact, unfortunately. There is a labour and skill shortage for different sectors.

Rates of pay do factor into people's thinking during these times. Certainly we're starting to see some anecdotal evidence of wage pressure. But that's a moment in time, right now. What we're seeing is some competitiveness across industry for people and, therefore, that competitiveness equals pressure on wage rates. I don't actually know if I'm answering your question, Senator. Please stop me if I'm not.

In terms of number of applications, what's also well documented is that the number of applications per job has decreased all the way through. That is also contrary to people wanting to take jobs at higher pay. If we look, as an example, at the SEEK data that is pushed out, you can see that the overall number of applications have decreased on a per job basis. The number of successful applicants has also decreased, which means people are pulling out through that process, regardless of rates of pay. It's quite a complicated time.

My take on this is that we're seeing an environment where people are being more choosy than they've ever been about the type of work they're accepting. Some of that relates to flexibility; they want greater flexibility in their working life. Some of that relates to mobility. Unfortunately, in Australia, we do have a problem with mobility. I think that's complicated by increasing rents, with people less likely to move for work if they're renting. I also think it's compounded by some insecurity related to COVID, in that people are less likely to travel, particularly on public transport, because they may have a fear of contracting COVID.

Senator SMALL: They're all fascinating insights. You definitely answered the question, thanks very much for that. I want to ask a question that's related to this concept of flexibility. A previous witness mentioned individual flexibility arrangements, which are obviously a feature of our current system of workplace relations. How widely used are they within your organisation? What impediments do you see to using them to a greater extent? And what would you advocate for in terms of any change there?

Mr Fairbank: Senator, if it's okay, I will pass over to Kevin Cameron. He can provide some further insights into that, and then I'll add to his response.

Mr K Cameron: I am not going to be offering great insights here. We don't have terribly many individual flexibility arrangements in our organisation. We have some. Where we have needed them, we have found the current system works adequately. We've been able to approach the people or the people have been able to approach us. We have reached an agreement, the arrangement has been put into writing, and the parties have moved on happily. It's not something we do very often. I don't have great experience with them nor do we have a lot of thought about how they can or can't be amended to assist because we don't rely on them terribly often.

Mr Fairbank: It's possible the interest in them is growing. That would perhaps go to the environment that we're in. I do agree that around flexibility there is no going back. We all have to accept that the way people want to work and are choosing to work is changing quite rapidly. It's up to us as employers and government to come together and collaborate to support that move in a way that recognises people's desire for individual choice, and that is particularly important. If anything, over the last number of years, we've seen this growing want for people in all industries and in all forms of employment to increase their levels of flexibility with work.

CHAIR: You may have heard some of the evidence or read a lot of about what happens with individuals. We are talking about choice and about people wanting to have a choice. Would you consider that regular gig work that competes with labour hire is a fair choice, if they're often doing the exact same work?

Mr Fairbank: We don't operate in the gig economy. It's a really important point, though. There's been lots of dialogue around the gig economy. I think there's a misunderstanding between the gig economy and the on-hire space. They're two different industry sectors. The way we operate as an organisation in deploying our 35,000 people or so is completely removed from the gig economy and the arrangements that are in place. I am not experienced or qualified enough to comment specifically on the gig economy. We have said on many occasions they need to be viewed as completely separate working environments and unrelated. I don't know whether or not that helps answer your question.

CHAIR: You're welcome to answer in any way you wish. The deputy mayor of the Isaac shire council, which covers most of the Bowen Basin, Councillor Veve, was referring to comments there were direct mine jobs available, permanent jobs. If somebody is actually not opting to become a permanent, which is the substantial proportion of casual workers working in labour hire, when they have to take a wage decrease of 25 per cent to become permanent, they would also have the added insult of then having a situation where the work can still be insecure. We had evidence from a number of labour hire companies that this work is insecure over contract periods and that permanent jobs, which mean they can buy a home, raise a family, are direct hire permanent jobs. There's a real differentiation between permanent jobs with labour hire and casual jobs with labour hire, and there is also a differentiation with permanent jobs with direct hire. In that context, regarding jobs with direct hire, Councillor Veve said:

For us, that was as misleading as it is outright offensive. We have no doubt that less than 1 per cent have converted to permanent jobs, because there aren't permanent jobs to be had. It's really frustrating because mining companies create new workforce structures that deprive workers of genuine choice, and then they say they actually didn't want to do that anyway. ... I couldn't personally, on behalf of my community, be more offended at that statement.

What is your view of that statement from the deputy mayor, Councillor Veve?

Mr Fairbank: A little frustrated, actually. In our experience, again—I'm talking about the Programmed experience—that's not the case. We speak to our employees on a very regular basis, as you may imagine, and the vast majority are comfortable in the method of engagement, the method of employment. The ones who have converted to permanency, as far as we are aware—we do a survey every year—feel safe, feel supported, and they

have further opportunities in training and development. I don't necessarily subscribe to this idea that permanency with us is also insecure. I am not too sure exactly what that means.

In terms of obtaining mortgages, that has already been refuted. There's been enough evidence come out to say that banks do indeed provide mortgages and loans to people who are engaged on a casual basis. The research released from the Melbourne Institute, I think, confirmed that. My discussions with the banks confirms that. There are potentially some issues with people employed on a casual basis managing their savings and that may deter or prevent them from getting a mortgage, perhaps.

The danger we have in trying to put a single narrative across the whole of the casual employment landscape is that we're casting one or two issues across a very significant industry. It's not to say there aren't issues in the industry; of course there are. There are issues across every single industry. But this constant dialogue of—even the terminology of—insecure work is, at times, a little misleading. The coal sector is just one of many sectors that people are engaged on a casual basis. In our experience, we have not received the feedback and don't receive the feedback that has just been highlighted.

CHAIR: Thank you. I just want to clarify. If, on notice, you can make that Melbourne Institute evidence you're referring to available, that would be of assistance. I am asking for that for the committee's purposes. Community leaders have consistently had a conflicting view to what you just put to us in that Melbourne Institute report and also conflicting views from mine workers and mine unions.

I just want to move to a separate and different line of questions. We received evidence from workers about no-poaching clauses or what is also referred to as 'non-solicitation clauses', which require mine operators to pay a penalty if they hire a labour hire employee. Do you use those clauses?

Mr Fairbank: No. That's a surprise to me. We don't as an organisation do that. In terms of conversion, certainly, there are examples where customers of ours may request to take an individual onto their payroll. That's typically done through agreement, but there's no penalty clause.

CHAIR: Thank you. What is your view where there are penalty clauses that apply?

Mr Fairbank: I don't think that should exist. Kevin, you may come want to come in here, perhaps, but to my knowledge we've never engaged in that. I'm surprised to hear about it, actually.

CHAIR: Thank you very much for your evidence today, Mr Fairbank and Mr Cameron. I appreciate the time you have given the committee. We'll be able to use your comments in our deliberations and the preparation of our final report. If you have taken questions on notice, please provide responses to the secretariat by 10 August 2021. I thank you again for your time.

KUTASI, Mr Kyle, President, HR Nicholls Society [by video link]

[13:45]

CHAIR: Thank you for joining us. The HR Nicholls Society has lodged submission 124 with the committee. Would you like to make any amendments or additions to your submission?

Mr Kutasi: No, thank you.

CHAIR: Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I now invite to you make an opening statement of no longer than two minutes to allow for time for questions. At the conclusion of your remarks, I will invite members of the committee to ask questions. If you have prepared a longer opening statement, you may email it to the secretariat for inclusion in the *Hansard*, and they will also provide it to committee members.

Mr Kutasi: We thank the committee for this opportunity to make a submission and to give evidence. The HR Nicholls Society is Australia's only non-profit institute solely devoted to reforming Australia's industrial relations system. The society represents the thoughts and ideas of thousands of Australian employees and small businesses. The society was formed in 1986 by a number of concerned Australians in response to rapidly changing global economic conditions that have rendered the old centralised wage-fixing system unsuitable to our future. Governments of all political views since then have agreed that reforms are needed. Often this reform is bipartisan. Accordingly, Australia now has a much more flexible system of regulating employer-employee relationships, and we submit that this continues to be a desirable outcome. The global economy is now much diverse than it was even in 1986. This necessitates that the labour market must continue to be nimble to keep Australian businesses competitive and to give Australian workers maximum choice. Our membership includes many people who prefer to work casually for a variety of reasons. Indeed, they often reject offers to move to permanent employment. Whatever problems there may be in the labour market, insecure employment is not one of these.

CHAIR: Thank you very much for your opening statement.

Senator SMALL: We've been talking a lot about the negative connotations that the word 'flexibility' has attracted in the modern industrial relations discussion in Australia. What views does the society have on both the need and the desire for flexibility, particularly as it relates to the notion that pay is everything to workers in the modern economy?

Mr Kutasi: The society has a view, based on the feedback from its membership, that flexibility is a good thing both in respect of pay and in terms of the greater choice and flexibility that it provides to everyone involved. That doesn't just mean employers; it also means employees. It is often the choice of the employee themselves to work casually or more flexibly, even when they have the alternative of doing otherwise. I can give examples of that if the committee so desires.

Senator SMALL: Yes, please. It would be useful to explore those examples.

Mr Kutasi: We represent quite a few members, both employers and employees. One particular industry that comes to mind that often is raised in this area is aged care. I note that the previous person who gave evidence was involved in aged care, and some questions were asked of him in this sense as well. We have a number of employers who tear their hair out over employees who choose and refuse to work on a permanent basis. There is a culture—I don't exactly know why; I have some ideas as to why—in aged care, particularly in capital cities, where employees will have two or three different aged-care jobs. When you press those employees and you ask them why they don't want to work five days a week for the one employer but instead work five days a week for three different employers, they tell you that it's because they feel it gives them greater options. If one job doesn't work out for them, they have another two they can fall back on. They can increase their hours, they can decrease their hours, and they can choose the type of work they like to do. There may be a week they might be rostered to do a task they don't particularly want to do, so they choose to not roster themselves to work that week. It gives them flexibility. Yes, it may well be that that means that they forego overtime or higher wages that may come with permanence; that's their choice.

Senator SMALL: It speaks to the idea of fitting work around life rather than life around work in the modern economy. To me, one of the risks of regulation is always unintended or adverse outcomes. There's no more insecure work than no job at all, as one of our earlier witnesses rightly put it. Does the society have a view on the potential outcomes of something like 'same job, same pay' regulation or applying traditional employment frameworks to the gig economy?

Mr Kutasi: Yes, absolutely. The problem with 'same job, same pay', of course, is what that means in practice. As I just highlighted, the employee in those circumstances is choosing a particular mode of work. If it's a case of them being told, 'You have to work for us full time, no alternative,' or, 'You have to work for us on a permanent basis, no alternative,' they'll probably choose to go elsewhere. So everyone ends up worse off. The employer loses a valued employee, and the employee has to go somewhere else. Everyone is worse off as a consequence. This is the problem of regulation. I don't wish to lecture the Senate committee on regulation, but all regulation has a consequential reaction elsewhere. Sometimes that's good; sometimes it's bad. I think our position as the society would be that the government needs to be very conscious about the effect of any regulation and should be very careful before regulating things that aren't causing problems.

Senator SMALL: To explore that, do you think that the rise of the gig economy and its use of non-traditional employment frameworks points to an acute problem with the lack of flexibility in traditional employment, particularly as it relates to Australian awards, or do you think it's something else?

Mr Kutasi: It's a bit of a combination of both. Our knowledge of the people who are working in the gig economy is that they are often not happy sitting within an award environment and with the inflexibility that comes with that. It can be sometimes ascribed partly to a desire to want to control their own money or trade annual leave, for example, for higher rates of pay, which of course is not able to be done under the Fair Work Act. I'm not saying that should be the case, but I understand that is a motivation the people who are sometimes working as say, Uber drivers. Often as well it's to do with moonlighting. There are some people work on the weekend as casual labourers, say, on Gumtree or Airtasker, who would otherwise not be able to get permission from their employers to do that sort of work. They want it to be a very casual or subcontractor-type relationship, and they want to keep it that way.

Senator SMALL: It's a good example of where flexibility actually leads to increased earnings rather than the connotation it normally carries. One final question from me, then: what is the reform that the society would call for to enable Australia's industrial relations system to better suit the needs of employees, workers, contractors and employers in the modern context?

Mr Kutasi: We've only got 45 minutes here! There are many things that could be done. We would first and foremost argue that there should be less regulation in a whole range of ways, not only around flexibility and awards but around greater ease of enterprise bargaining. I know that this is not on the government's policy agenda, but AWAs were in our view a very useful tool to allow people to negotiate their own outcomes. I understand that IFAs still exist in the act. They have some usefulness. They could be more useful. In my view, there needs to be greater certainty around what a contractor is versus what an employee is. I know this is a very fraught issue—and I won't go into the whole history of it right now unless someone wants me to—but a lot of our members tell us continually that they have a lot of difficulty engaging subcontractors because there's no real certainty as to the legal status of that relationship.

Senator SMALL: Thank you very much, Mr Kutasi. I yield the call.

Senator WALSH: Thank you, Mr Kutasi, for being here today. Just for the record, at the beginning, I want to get a bit of background as to the HR Nicholls Society—in particular, what is the funding model, and are there any major donors or members of HR Nicholls that the committee should be aware of?

Mr Kutasi: Absolutely. What specifically would you like to know?

Senator WALSH: Who are your major donors?

Mr Kutasi: We don't have any major donors. We don't have any minor donors. We are entirely reliant on the membership income from our members.

Senator WALSH: So the funding model of your organisation is individual membership based?

Mr Kutasi: That's 100 per cent correct.

Senator WALSH: Thank you. In relation to the founding of your organisation, it's well known that it was founded by former Treasurer Peter Costello and other figures associated with the Liberal and National parties. You occasionally host Liberal members and senators to speak to HR Nicholls. Are the views of your organisation broadly in step with the Liberal Party or at least some members and senators of that party?

Mr Kutasi: Firstly, thank you for your question. We don't just host Liberal Party members or former Liberal Party members to speak; we have had Labor Party people speak at our conferences as well. I think we've even had Greens over the years. We've had Nationals. We will hear from anyone who is willing to attend our conferences. It does tend to be the case that only coalition members or former coalition members wish to attend our conferences, but we certainly do extend an invitation to a whole variety of people to hear their views on topics.

Sometimes the views are controversial, and sometimes they're widely accepted by the members who turn up to our conferences. We are certainly nonparty—we don't have any affiliation, formally or otherwise, with any side of politics.

Senator WALSH: That's great. Thank you. Just before I ask you a couple of more substantive questions—you wouldn't say that it's mostly Liberal politicians who come to your events—because your views tend to align? Is that what you would put on the record?

Mr Kutasi: It is a well-known matter of record that our former president, Ray Evans, who is no longer alive, accused then Minister for Industrial Relations, Kevin Andrews, in 2005 of introducing a 'Soviet re-regulation of the industrial regulations system' and was heavily critical of the work choices legislation. As I said, we certainly support deregulation of the labour market. That may be something that some members of the coalition side of politics tend to support from time to time, but we are certainly able to criticise both sides of politics and support both sides of politics when they do good and bad things. For example, we thought that the Keating reforms in 1993 were a step in the right direction and we applaud those.

Senator WALSH: Thank you very much for answering those questions. In that spirit, these questions have been asked of the major think tanks that have presented to the committee. So thank you for that.

Mr Kutasi: Certainly. Thank you.

Senator WALSH: We received a lot of evidence in the inquiry on the gig economy, including from the gig platforms and from gig workers themselves. There is an article on your website authored by a Ms Dye, who I think is your executive director, titled 'Don't let California politicians cancel the gig economy'. It is from August a couple of years ago. The first paragraph says:

Sobbing hearts have decided gig workers aren't earning enough money or receiving the benefits they deserve.

Could you elaborate on that?

Mr Kutasi: Firstly, Ms Dye is no longer our executive director. She has moved on to other pastures now. I can't speak to exactly what she was referring to in that article. But I don't think it's any secret that some gig employees earn less than people performing those same jobs on a full-time basis per hour. There's no real secret about that. There are reasons for that. The flexibility can sometimes be traded for remuneration.

Senator WALSH: Yes. The article goes on to make that sort of assessment:

Uber drivers didn't ask to receive the minimum wage, sick leave, vacation time, or any other benefits.

Is it your opinion also that Uber drivers don't want those sorts of minimum rights and protections?

Mr Kutasi: Firstly, I'm not necessarily agreeing that Uber drivers do not earn the minimum wage after their remuneration is taken into account, but I would say that, whatever level of remuneration they receive, they are voluntarily entering into those arrangements and, if they weren't earning enough to make it worth their while, they wouldn't be doing that work.

Senator WALSH: Okay. I have one last question in relation to this article. The article says 'the fact that these workers earn less than the minimum wage'—so I guess there is a different view there, where you said you're not necessarily convinced that they do. I think we've had—

Mr Kutasi: As I understand it, that article refers to what is going on in California.

Senator WALSH: Okay. Yes. The article says:

The fact that these workers earn less than the minimum wage should lead us to question the minimum wage, not the gig economy.

Is it your position that working for less than the minimum wage is, at times, for people a choice? What is your position on the existence of a minimum wage in this country?

Mr Kutasi: The answer is yes. People do choose to work for less than the minimum wage. Lots of people in Australia currently choose to work for less than the minimum wage. I will give you an example. When I was a second-year paralegal, I worked for \$4.50 an hour, which was about 25 per cent of the minimum wage. If I didn't do that, I wouldn't have had a job. I am now a partner in a law firm. I absolutely, 100 per cent, thank my then employer for giving me that opportunity. I honoured his opportunity by never dobbing him in and never claiming for underpayment. I am very grateful for it.

Senator WALSH: The second part of that question was: what is your view on the existence of a minimum wage in this country? I will just add a little bit to that question. There is another article on your website called, 'Let's fight poverty, let's abolish the minimum wage'.

Mr Kutasi: Yes. That's absolutely our position.

Senator WALSH: Right. Okay. So we shouldn't have a minimum wage in Australia, and companies should be able to pay workers whatever they choose; that's your position?

Mr Kutasi: Precisely. Yes.

Senator WALSH: Okay. I note on your website there's a page titled, 'Abolish compulsory superannuation'. Is it also the position of HR Nicholls Society that compulsory superannuation should be abolished as well?

Mr Kutasi: Yes. People should be entitled to do with their money what they want to do with their money.

Senator WALSH: Okay. In relation to other rights that are currently enshrined in the National Employment Standards, could you give us an indication of whether you support them or whether you have a position that they should also be abolished—for example, paid annual leave and paid sick leave?

Mr Kutasi: We don't support the abolition of paid annual leave. We support the right of people to choose if they want to receive annual leave or if they want to receive more money in their wages instead.

Senator WALSH: Okay. You think that there shouldn't necessarily be a right to paid annual leave? Or do you think, if there is that right, it should be able to be traded off for wages?

Mr Kutasi: Yes. They should be entitled to trade it off, which, by the way, is currently the law. There is an ability to cash out leave by agreement.

Senator WALSH: On that one, it's not that you want to abolish an entitlement to annual leave; you just think that, if there is an entitlement, some or all of it—including all of it—should be able to be traded away for wages?

Mr Kutasi: That's correct. Yes.

Senator WALSH: What about public holidays? Is that an entitlement that you support? Or do you think that should be abolished?

Mr Kutasi: We absolutely support the existence of a right for people to take public holidays, if they wish.

Senator WALSH: Do you support loadings for public holidays, like penalty rates?

Mr Kutasi: It's worth noting that the vast majority of Australians don't receive a loading for working on public holidays. If you want to get down to the individual level of what particular awards provide for public holiday loadings, that's a different topic altogether. As I understand it, in Australian law currently, there's no legislative requirement for people to be paid loadings on public holidays.

Senator WALSH: What is your opinion on protections in the NES like domestic violence leave? Is that something you support or something that you're opposed to?

Mr Kutasi: I am an employer myself. I would never require an employee to attend work when having a difficult personal circumstance. The specific circumstances around why someone requested domestic violence leave, unfortunately, are sometimes abused, and that's the problem with all legislation—that it creates regulation, which creates distortions. Do I want to see an abolition of the right to take domestic violence leave? No, I don't want to see that abolished.

Senator WALSH: But would you like an enforceable right to receive domestic violence leave to be abolished?

Mr Kutasi: That is not the position of the society, no.

Senator WALSH: So you'd like people to be able to sort out domestic violence leave amongst themselves?

Mr Kutasi: Correct.

Senator WALSH: But you don't like the existence of a regulation that might give someone a specific entitlement to it?

Mr Kutasi: That's right, yes.

Senator WALSH: We talked about the American context before in relation to Uber drivers and California, and I'm just wondering what the society's views are in relation to Medicare. There's obviously a different model of healthcare provision in the US, where health insurance often attaches to the employment relationship, whereas obviously we have universal access to health care via Medicare. Do you support the existence of public universal health care?

Mr Kutasi: Firstly, I'm not sure that California itself doesn't have a universal healthcare system. American healthcare systems are certainly not my area of expertise, but, as I understand it, different things operate in different states in the United States, and a number of the larger states do have their own universal healthcare systems. If the central premise is that the gig economy is used in places like California to save the employer

money, I'm not sure that's necessarily the case. Nonetheless, I'm not sure what the connection between this inquiry and the Australian healthcare system is; perhaps you could enlighten me.

Senator WALSH: I'm just asking what your position is on Medicare, Australia's universal healthcare system.

Mr Kutasi: The HR Nicholls Society offers no opinion on Medicare.

Senator WALSH: No problems, thank you. In your opening comments you talked about individual contracts—actually, I just have to check that with you. Did you do that?

Mr Kutasi: AWAs and IFAs, yes, that's correct.

Senator WALSH: My apologies. I had to log off and reboot while your opening comments were happening.

Mr Kutasi: Understandable.

Senator WALSH: In relation to individual contracts or Australian workplace agreements, you said that it's your view that they should exist. Is it your view that they should exist as they did previously, in the sense that people are able to strike agreements that may, on balance, go below minimum award wages and conditions?

Mr Kutasi: I don't believe it was ever the case that AWAs were able to be struck that went below minimum award standards and conditions.

Senator WALSH: Without me going down the line of that history, is it your view today that individual contracts should be able to be struck that go below minimum award wages and conditions?

Mr Kutasi: No. They should meet whatever minimum standards exist. The society have a view that there shouldn't be the same level of minimum standards, but we would submit that it would be a highly complicated and confused system if you were to have minimum standards but individual agreements were able to be created that undermined that system.

Senator WALSH: What sorts of minimum standards is the society generally supportive of? Is it just the NES or is it awards with all of their various provisions?

Mr Kutasi: To be clear, and I think I said it earlier, we don't support the existence of any minimum standards and conditions as a legislative requirement. People should be able to strike whatever bargains they wish to strike. That's always been our position.

Senator WALSH: True, which does—I take your point—make the question of whether individual contracts should go below minimum pay somewhat redundant. I accept your point, because you're essentially saying there shouldn't be any legislated minimum pay standards.

Mr Kutasi: That's correct. But, if they exist, we still support the existence of individual contracts, whether by way of a limited statutory instrument, such as an AWA or otherwise, and those should meet whatever minimum standards exist.

Senator WALSH: Okay. I guess you're taking the view that people should navigate a market that you'd prefer to be less regulated and try and find employment—in a more open sort of market.

Mr Kutasi: That's correct.

Senator WALSH: If someone was being paid, like some of the Uber drivers and Deliveroo riders that we heard from in our hearings in Sydney, something like \$6 an hour, as in some of the evidence we heard, and they don't like it, what is it that you suggest that they do?

Mr Kutasi: Well, Senator, why are they working in it if they don't like it?

Senator WALSH: That's my question. What is that you suggest that they do?

Mr Kutasi: I would submit that either it's not true or they do like it. That's why they're working.

Senator WALSH: I think we have heard fairly significant evidence from different sectors that people struggle with their low rates of pay, whether they're gig workers or aged-care workers, for example. They struggle with a lack of certainty about the hours they're going to get and about having future employment. It's certainly the case, from the evidence that we have heard, that many people don't like the circumstances that they find themselves in. So I wonder what your advice is to them—

Mr Kutasi: With respect, I'd like to earn more money too, but I get paid what the market is prepared to pay me for the skills that I have and the hours that I'm prepared to work. I can't speak to individual circumstances. I don't know what particularly is going on in their lives. I haven't seen that evidence. All I'd submit is that I very much doubt that there is anyone out there who is working regularly for \$6 an hour in a capital city in Australia.

Senator WALSH: Okay. Thanks, Mr Kutasi.

Senator SMALL: Mr Kutasi, there's one question I should have asked earlier. Do you think that, in this discussion, there is a false premise that there will always be a job there and this is simply a haggle around entitlements—and I use the word very deliberately—whereas there is a concept of enterprise security at play here, where businesses simply will not employ people where the conditions of that employment arrangement are such that they threaten the business's sustainability?

Mr Kutasi: That is absolutely right. We all know that capital and labour are constantly in competition in any business. If you want to see an example of that, have a look at McDonald's in Australia. If you go anywhere else in the world, you have people opening the doors for you to go inside McDonald's and people serving at counters and working behind counters, and in Australia now it's completely staffed by machines, with some small exceptions. Australian minimum wages are, I think, either the highest or the second highest in the world. There was a report on that produced, I think, by a Lithuanian enterprise institute. I can't remember the name of it off the top of my head, but I can submit a copy of that to the Senate committee if so desired. We have priced ourselves out of the market in a whole range of low-skilled industries. Unfortunately, people without skills are unable to find that kind of permanent work without working illegally.

Senator SMALL: If you can send that to the committee secretariat, I think it would be really useful. I have one follow-on question from that if I might.

CHAIR: Yes, that's okay.

Senator SMALL: It is an interesting point you raise: that it's in fact the constraints and the rigidities of our employment framework that preclude participation of migrants and vulnerable cohorts, for instance. Do you have a view on that?

Mr Kutasi: They're not excluded. They work illegally. That's what happens. Where the migration system is stopping students from working more than 20 hours a week, I think you'll find that a very large number of those are working on the side as Uber drivers or for DoorDash or Menulog or whatever the case may be. People who are here on tourist visas, and so are not allowed to work, do the same. Others, who simply don't have the skills to be able to work for the minimum wage, have arrangements that are technically illegal as a way of getting around that.

Senator SMALL: Thank you for your time.

CHAIR: Mr Kutasi, thanks for joining us today. I just want to go to this question on the gig economy. Senator Walsh traversed some of this area, and you've traversed some of it in your answer already. I want to go back to this question about the average payment in food delivery. There has been evidence before this inquiry from Uber that at peak times in peak markets such as Sydney, regardless of workers being in other markets and also working outside those peak times in Sydney, the algorithm has an expectation that they be available so they can pick up work. Under those circumstances, even under Uber's own report, they were paying well below the minimum wage and, of course, not paying superannuation, workers comp or leave entitlements. I note that, about halfway down page 2 of your submission, you say:

It is therefore quite inaccurate to see the gig economy as an excuse for exploitation. The truth is quite the inverse. It actually provides opportunities to those who would otherwise go without.

Isn't the point of having minimum standards so that people don't go below an arrangement? There's not an even bargaining situation between Uber and a visa worker who receives no social security. I gather that's what you're referring to: they're better off taking the job no matter what, so it's starvation wages rather than starvation.

Mr Kutasi: With respect, they're not starvation wages. Eighteen dollars an hour is below the minimum wage, but it's not starvation wages. Secondly, we don't know that these people don't also have other jobs on the side. I submit that most of them do. These are the guys who mostly work full-time jobs during the day and do business as a side hustle to make a little bit of extra money. They might be a student, sitting in the car listening to lecture tapes and driving around and earning a little bit of extra cash on the side. Really, what is wrong with that? I don't see what the issue is. They're choosing voluntarily to do that. No-one is forcing them to get in the car and do it. If they do it once or twice and they find that they're not earning enough to survive and they choose to not do it any further, so be it. But, for the people who are doing it regularly, what's the problem with that?

CHAIR: So you're saying that, if they decide that, as some reports have it, being paid as little as just over \$6 an hour, having no workers comp and no insurance, providing their own equipment and being controlled by the algorithm of the company—in those situations, the option is to either accept that or go without, isn't it?

Mr Kutasi: Yes, that's exactly right.

CHAIR: If they're not prepared to go without, then what choice do they have, if, as you said in your submission, these are the only opportunities that many of these workers have?

Mr Kutasi: I don't believe that it is the only opportunity they have. There's a lot of work out there. We've had very low unemployment for a long time. There are a lot of jobs that go unfilled, and this is work that they're choosing to do. There must be a reason why they're choosing to do it. To use an analogy, how is that any different to me going and getting a coffee machine, standing out on my street corner and running my own makeshift coffee shop? I don't expect the government to step in and subsidise my wage if it doesn't work out. Businesses start and close in Australia all the time. Persons driving around in their cars is just another form of microbusiness, and they're just trying to earn a living from it.

CHAIR: A lot of evidence has been given regarding having minimum rights for workers—rather than simply saying that they are employees or they are contractors, saying that if you're a worker then you should have minimum rights, both collective bargaining and minimum standards that can be adjudicated by the Fair Work Commission. Do you have a view on that?

Mr Kutasi: My understanding is that there is already an ability for businesses to collectively bargain. Those provisions have existed in what used to be called the Trade Practices Act—it's now the Competition and Consumer Act—and have existed for some time. I understand that it's not the same process as enterprise bargaining in the Fair Work Commission, but those processes exist.

CHAIR: I just want to go back to evidence you gave before. You personalised the way you said it and, if I understood you correctly, you worked for 25 per cent of what the award rate was.

Mr Kutasi: That's correct.

CHAIR: I gather you had a choice of going to work somewhere that could actually pay you the award rate.

Mr Kutasi: No.

CHAIR: In the case of these workers who are getting paid such low rates of pay and are available for considerable hours that are unpaid—there has been a lot of evidence given in regard to that; they're paid purely on the gigs that they carry out—are you saying that those people are in a position to bargain to try to improve their state with those companies? Those companies don't bargain with them; those companies actually make unilateral decisions on what they pay and what they don't pay. It's not bargaining with that individual, let alone bargaining with a collective group of individuals.

Mr Kutasi: I didn't have the ability to bargain with my employer; I had no skills to bargain with him. I will, however, say this: the more competition there is for the Ubers and DoorDashes, the more bargaining power those people who are providing work to them or contracting to them will have. When I've been overseas, there are four or five different companies offering ride-sharing services. There are lots and lots of different meal-sharing services. There are lots and lots of different ones of all of these, as I understand it. It's not so much a comment on the Australian government but maybe more so on state governments that there have been a lot of attempts—and they're sometimes successful—to keep competition out. We don't have a lot of the competitors to Uber and Lift that some of the other westernised countries of the world have.

CHAIR: I want to stay on this food delivery question. Are you aware that, since the food delivery services were put in place and as the market competition between these companies increased, the actual pay rates that are paid have declined?

Mr Kutasi: I'm not aware of that. But, for arguments sake, let's say you're correct.

CHAIR: In that case, the question then goes to the bargaining position of somebody who is on a visa with no social security. As you say, they can otherwise do without. They really don't have any choice but to work for the figure that those organisations offer, do they?

Mr Kutasi: There are lots of other employers in Australia. There are lots of students working in construction. There are lots of students working at 7-Elevens. There are lots of students doing a whole range of different work. I completely reject the premise that their only option is to be an Uber driver.

CHAIR: I am using your evidence. When you were talking about gig work, you said that it actually provides opportunities to those who would otherwise go without. So I'm actually using—

Mr Kutasi: And it still does. Those are still gigs. Whether they're working for Uber or they're working as a casual for a builder, it's still, if you want to use the term, insecure work.

CHAIR: I have a final question. Would you be happy to work for \$6.70 with no superannuation, no workers comp, no leave entitlements and an employer who is able to arbitrarily decide what your pay rates would be?

Mr Kutasi: I did once, yes.

CHAIR: So you think that's an appropriate standard that others could follow if they wish.

Mr Kutasi: If it's something they want to do, yes.

CHAIR: What if it's something that the company simply wants them to do and they have no other option to get better wages? Your own logic is: why would you work for \$6.70 if you can get a higher rate than that? They're working for \$6.70 because that's the only rate they can get.

Mr Kutasi: No. It's the same as when I worked for \$4.50 an hour. It's because I wanted to build my skills and get a start in an industry that I saw myself having a future in. Now, there are a whole range of reasons why someone would work for \$6.70 as an Uber driver. It's flexible. It allows them to do work when they feel like doing it. It supplements whatever other income they're already earning. There's a whole range of reasons why someone would do it. We don't have slavery in Australia. We can't force people to do things they don't want to do. Would those people work for 67c an hour? I suspect not; therefore, they're making a choice. There's still a choice that's being made. Everyone has a price for what they do in life, and that's the price that they're choosing to accept. It's a freely entered into exchange, and I don't see what the problem is with that.

CHAIR: I think it goes to the point that economic slavery is alive and kicking in the gig economy, particularly in the food delivery area, because, as you've said, unless they take those opportunities, they would otherwise go without. That's quoting the exact wording you used in your statement.

Mr Kutasi: It didn't say it about food delivery; I said it about the gig economy.

CHAIR: We've now come to the end. I thank you for your evidence. The evidence will assist the committee in its deliberations and in the preparation of its report. If you've taken any questions on notice, please provide responses to the secretariat by 10 August 2021. Again, thank you for your time. The committee will now suspend for lunch.

Proceedings suspended from 14:32 to 15:15

DAWSON, Mr Tim, Branch Secretary, Western Australia, Transport Workers Union of Australia [by video link]

CHAIR: Thank you for joining us. Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I now invite you to make a short opening statement. Please limit your remarks to two or three minutes to allow time for questions from committee members. If you have prepared a longer opening statement, you may email it to the secretariat for incorporation into *Hansard*.

Mr Dawson: No, I'll just make a brief statement. Thank you for inviting me to give evidence to this committee and giving me an opportunity to relay the concerns of our branch of the Transport Workers Union of Australia about not only the new gig economy but in general about the way transport workers are treated, the number of hours that they're forced to work to make a dollar, and the owner-drivers and small businesses out there who have very few if any rights when it comes to determining what they should be paid and how safely they can operate. In general, a lot of this leads not only to them struggling to make a living out of their job but to a lot of companies going under because of that pressure from the top. The mental health of transport workers is also a major concern for me and the Transport Workers Union.

I'm really here to answer any questions that the committee members have. The Transport Workers Union, and I on behalf of our national branch, have put out numerous media releases. We've made many submissions to different committees. What concerns me, with due respect to the politicians on this committee, is that politicians don't seem to want to listen to the plight of the transport workers, subcontractors and owner-drivers out there. It seems that our submissions fall on deaf ears. I hope that this committee takes on board the many submissions and what witnesses have to say about the plight of our industry. I've been in this industry for nearly 40 years. I've been an official of the Transport Workers Union for 23 years, as an organiser and now as the branch secretary, and I don't think I've seen the industry in a worse place than it is at the moment. It's not just because of the pandemic; we were in this position well before then. I think what the pandemic has done is highlight a number of those issues to more people than those in the bubble of the transport industry.

I'm free to answer any questions, really. That's why I've come on here: to answer questions and give my point of view on questions that senators may wish to ask.

CHAIR: Thank you, Mr Dawson.

Senator CANAVAN: Thank you for your evidence, Mr Dawson. We spoke earlier in the inquiry about the potential for some delivery platforms, like Amazon, to be moving towards an Uber-like model for transport freight. Have you got any experience of that in Western Australia at this stage? Is that occurring at all over there?

Mr Dawson: In some small ways. There are some companies out there—I think Loadshift is one—that work off an app. People get work off an app. But the potential for the transport industry to be exploited through these types of platforms is unending, really. We've seen it in the past, where some major companies have gone through a tender process where they bid online over a short period. Some of our big mining companies have done that in the past. Some portion of work is put online, so you jump on a computer and bid, and it just keeps driving down rates until they can't find someone who will drive it any lower, and they accept that. It is a major concern of ours that container work, long-distance work or any type of work within the freight industry can go to a system where you're going to have to bid for work on an app, and the lowest price will get the work. We will only see our industry become more dangerous. People will take more risks because the rates aren't adequate to have a sustainable operation. It's more a concern about where we're seeing, in some small ways, our industry will go.

Senator CANAVAN: Are you sure it will necessarily lead to worse outcomes? As you've expressed, transport workers were already getting exploited well before the introduction of these types of arrangements. I know a big complaint is about payment terms and time frames. At least that's not really an issue in the apps we've seen so far; I believe the workers basically get paid straightaway. There are no 60- or 90-day term arrangements. Aren't there potentially some advantages with an app based system in terms of scrutiny and quicker payment times? Isn't there an opportunity for the union to get involved at the starting point and make for a better industry?

Mr Dawson: If we thought that the new economy was going to assist transport workers to be paid on time—there may be some that pay on time, but I think we will see over time that it won't be any different to what we see now. In Western Australia, some companies take 90 days to pay owner-drivers and small businesses.

Senator CANAVAN: It's ridiculous.

Mr Dawson: Absolutely. I'm not a legislator, but I would see that as one of the easiest things to fix. It's only one of many problems. Even if it were to correct payment times, the pressure to work and earn a sustainable rate would far outweigh any improvement on payment times, considering what I believe these apps would do in

driving rates down. If you're going to tender for work on an app that drives rates down and gives people the opportunity to continue to undercut on single work, never mind large contracts, I see that payment times might be the least of their problems in the end.

Senator CANAVAN: We've spoken to many Uber drivers and what have you, and I find that the ones that used to drive taxis typically prefer the Uber model. Taxi drivers, like truck drivers now, probably weren't the most cared-for workers in our workplace. Is your union involved in any discussions with the likes of Amazon to try to get a good system set up from the ground level here?

Mr Dawson: Our union has discussions with numerous different platforms and companies, from big retailers to Amazon. It's not that we don't have discussions with them. It's not that we don't engage with them to have further discussions—around their platform, the way they pay people, how they pay them, what their rates are, whether they're employees or contractors. We will continue to have those discussions. I suppose the discussions to this point haven't been as fruitful as we would like them to be.

Senator CANAVAN: Just on the broader issues facing the industry—you mentioned payment terms and times—what would you do if you were Prime Minister? What would you put in place to get rid of those 90 days and those sorts of things?

Mr Dawson: I'd enforce 14-day payments. I'd bring in legislation. No doubt you have some brilliant drafters within your system there, in the Public Service, who could draft some legislation that would protect small business. I know it's not only owner-drivers; I think it's all small business, to be honest. But we represent owner-drivers and small business, and I think we need legislation that would give 14-day payments. We just had a company in the removalist industry go broke, owing tens of thousands, if not hundreds of thousands, of dollars to small businesses. That means they weren't paying them in 30 to 60 days. If we had a way of shortening that, at least when a major company goes broke, the money they owe is not such a substantial amount as far as long-term payments go. That's the first thing I'd do. I'd be talking to the people who draft the legislation to draft up something that says 14-day payments.

Senator CANAVAN: Fair point.

Mr Dawson: And put some teeth around it so that there is an incentive to make sure you pay in 14 days—because the penalties may outweigh what you are not paying people. So it needs to have teeth as well.

Senator CANAVAN: Yes. What about the broader issues? You mentioned safety as well. I know there were attempts to put in safe rates. I thought they were a little clumsily implemented. What's the latest thoughts you have on trying to improve safety outcomes in the industry?

Mr Dawson: I was an owner-driver for about eight years, when I was in the real world, before I became a union official. A business needs to be sustainable. Rates should be safe and sustainable. You should be able to recover your costs. Rates should be recoverable and sustainable. The transport industry in some ways is unique. The majority of people in the industry—truck drivers anyway—are out there on the highways, dealing with mums and dads and families, so they need to be safe. Their vehicle needs to be safe, they need to have safe loads and they need to be restrained safely. They need to work safe hours. They don't need to be taking shortcuts or risks because their rate isn't sustainable—to run their operation, and to put food on the table and a roof over their heads for their families. Whether we call it a safe rate, a sustainable rate or a recoverable rate, there needs to be a sustainable system for truck drivers who are dictated to by the top of the chain. The big retailers and the mining companies dictate what everyone below them gets paid. The people at the bottom, unfortunately, are the ones that suffer and are forced to take shortcuts. We've got to take away the risk by taking away people's reasons for taking shortcuts.

Senator CANAVAN: Thanks.

CHAIR: Senator Walsh.

Senator WALSH: Thank you very much, Mr Dawson, for being here for us. Just before I ask you a few specific questions, I was wondering if you could please just give me a bit of a snapshot of what the industry looks like there for you in Western Australia. Who are the major companies at the top of the supply chain? Who are the contractors, subcontractors and owner-drivers? Can you give us a bit of a snapshot of how it works?

Mr Dawson: The major retailers are Woolies, Coles and Metcash in Western Australia. Aldi are here now as well. The mining industry—as everyone would be aware, because we keep telling everyone—is the engine room of Australia. So, as you can imagine, you have BHP, Rio Tinto, FMG, Roy Hill—which is Gina Rinehart's company—Woodside oil and gas, Chevron, and any other number of mining companies that are mining either gold or iron ore within Western Australia. If you go into the north-west, the four big miners have rail. But your juniors, like Atlas and Mineral Resources, and a number of others, cart their iron ore on roads. There are close to

1,000 trucks carting iron ore. Most of them are what we call quads and super-quads, which are 60 metres long, carting 200 tonnes. They are on the roads in the north-west with our grey nomads. We have a record number of people on holidays in caravans in Australia at the moment, and just your normal day-to-day people on the roads up in the north-west.

There are people carting containers off the wharf to distribution centres and then out into supermarkets in general. In terms of transport companies, we have Toll and Linfox of course. We have some family businesses here. Goldstar employs 100 people in the south-west. One of the bigger ones is South-West Express, which has 50 or 60 drivers, carting in and out of DCs in Perth from the south-west. There are probably a number of companies. In the north-west you have a company called MGM, Rivet, Jennison's—and Qube, which is pretty much in the same league as Linfox and [inaudible] these days.

We have people in the north-west who have in some cases only driven a truck that is no more than 27 metres long and weighs about 80 tonnes, and who have been thrown into a quad—with no extra training other than what the company may give them—that is 60 metres long, weighing 200 tonnes. It is frightening at times, when you think about the lack of training that is required by government for people to go from one type of vehicle to another. If you talk to drivers up there, you will hear how some of them are terrified of what they have to put up with on the roads with other drivers. So it can be a scary industry, and that is without the pressure of the hours that they have to work, without the pressure of taking shortcuts to get the job done. So that's a bit of a snapshot of WA at the moment.

Senator WALSH: Thank you very much. I appreciate that. What is the effect on drivers when these major companies at the top of the supply chain change who their transport company is—particularly on the basis that the contract is going to be delivered at a lower cost.

Mr Dawson: It is always going to be about cost, unfortunately. They will talk about safety—I have spoken to many retailers and mining companies over the years about safety—but it tends to come down to the dollar. Recently in WA, Toll held a contract for a major retailer. It was their metropolitan distribution. They went to another business, which we believe was significantly cheaper. There were a number of owner-drivers on that contract. The majority were employees directly employed by Toll, but there was a group of owner-drivers. Some had one truck—there were different types—and some had four or five trucks. All of them were engaged on what we would see as sustainable rates. They paid their drivers a sustainable rate and what we would see as well above award rates. They were promised the world by the new incumbent. They were promised by the retailer that nothing would change, or that, if it did, they would have 12 months to seek other work, or there would be a transition over 12 months. Well, within a matter of weeks the owner-drivers weren't getting any work, were not receiving enough work to earn a dollar. They couldn't pay their drivers because they weren't earning money, hence they either had to seek work elsewhere or, potentially, they were going to go out of business.

We have no rights whatsoever. The promise of a 12-month transition, if that was the way it was going to be, was broken. These are small business people—they have businesses; their houses are on the line; they employ some people; they've always done the right thing by their employees—and what stressed them the most was that they couldn't look after their own employees. They weren't getting enough work to look after these employees of theirs. I had discussions with these people, and it was distressing to see their concern.

The big retailers say it's not their problem. They've contracted it out; it's someone else's problem. The transport company didn't see it as their problem because they were subcontractors, and they wanted to go to a full employee model. People might say, 'Geez, the union will be happy with that.' No, we're not happy. We're not happy when people get treated like that and owner-drivers get treated like that. They need rights. Small operators in an industry like the transport industry need some rights when these tenders get changed. That's why they need a tribunal or somewhere they can go to. Luckily, in WA, we have one, but, unfortunately, it doesn't have the power that we believe it should have. We're in discussions about hopefully getting some power in there so that it can have some teeth and can actually put some orders on companies when they treat people and small businesses like that.

Senator WALSH: What is the method or the mechanism by which the owner-drivers can go about trying to set their pay and their conditions? Is there anything that exists? Is it adequate?

Mr Dawson: No, there's very little, unless they have some industrial power. At the moment, there's not as much industrial power as we would like. And they are owner-drivers, so it does make it more difficult. They pretty much have no power at the moment, which is disappointing. What they need is an area that they can go to, like a tribunal, that can say: 'These people have been treated unfairly. Let's make sure they're treated fairly.' Or if they've been promised something—if it's a verbal promise and they can prove they were verbally promised

something, that it means something to them, then a tribunal should be able to say, 'Written or verbal, a contract means something.'

In this case, if you guaranteed them something and there are plenty of witnesses to say there was a commitment made to them—'We'll make a commitment for a 12-month transition while you either find more work or we decide to keep you on board'—then that commitment should be met. I don't think any of us would think it's too much to ask that, if a commitment is made to people, it's met. Currently, commitments aren't even worth the paper they're written on half the time, never mind when it's verbal. That's what we would ask for, that they have somewhere where they can go.

Senator WALSH: In that idea, I guess, what do you think the role of the head of the supply chain should be? Is it enough to be able to bring the transport companies to the table, or do the major companies that you mentioned before need to be brought in in some way?

Mr Dawson: No, the whole chain. We have a chain of responsibility in logistics and transport nationally—it's questionable whether that does the job that was envisioned when it was first brought in. But, no. The people at the top are the ones who decide what everyone else below them gets paid. They have the ability to put into their tenders and into their contracts whether there should be money for training, whether there should be money to make sure, if they engage owner-drivers, that owner-drivers are engaged on a safe and sustainable rate. They have the ability to do that. They have the ability to do that, and a tribunal should have the ability to enforce them to do that. Whatever they have the ability to do should be enforceable.

It is no good having a system that only gets somebody part-way up the chain, whether that's an owner-driver who has to—their requirements are set. If they need to have a permit, they have to have a permit or they can't operate. They need to pay their registration. They need to pay their loan back to the bank. And then there are all the other things they need to do. There's a requirement for them to do all of that under law; there is no requirement for the transport company to pay them a rate where they can do that. There's no requirement for the retailer or the mining company who engage a company to do the work to make sure everyone down the chain works safely and sustainably and meet all their requirements, so why wouldn't we have the top of the chain—we need a tribunal that has the power to enforce that. We're wasting our time if we don't.

Senator WALSH: Thank you very much, Mr Dawson.

Senator SMALL: My apologies for not having my camera on; my connection has been lagging. I want to clarify something. Your testimony to Senator Walsh, is that concern around employees working under EBAs or is that around owner-drivers as independent contractors or small business people per se?

Mr Dawson: When we negotiate an EBA, I'd like to think we negotiate one that is sustainable for the employees we negotiate for. We also have an award system. We can question whether the award system is efficient or not, but we have an award system for employees that—we could use some more teeth in the Fair Work Commission to police that. But, no, it's mainly around unclassified employees or owner-drivers.

I will define what I see as an unclassified employee. It's someone who is forced onto an ABN or someone in the gig economy who we believe is an employee, but is classed as a contractor within the gig economy. Say somebody drives someone else's truck. All they do really is supply their labour and have an ABN, and someone classifies them as a contractor so that the employer gets out of paying workers comp, superannuation and whatever other entitlements that employee is entitled to.

If we had a tribunal, I would expect that within that chain, if there weren't the proper procedures and requirements of all the contractors below the client, then the client would be responsible for that. It's up to them. They can put all sorts of requirements for them to do all the things they need them to do, but they should do that as well. And in a gig economy, we've seen time and time again in Australia and around the world that these people are classified as employees but de-classified by these multinationals that just want to exploit them. They want to make more money from their labour, but don't want to pay them what they are entitled to. That's what I see in that area.

As for owner-drivers, well, owner-drivers—true owner-drivers, whether they are a small business, a large business or a subcontractor—own the truck, they operate the truck. Or they own the truck and they employ someone under the Fair Work Act as an employee, whether it's EA or award. That's how I define the difference.

Senator SMALL: I'm struggling a little to keep up. Maybe we can just take these in turn. Some of your testimony around what I understand is contracts not being fulfilled—for instance, the Independent Contractors Act includes unfair contract provisions. Obviously anyone who doesn't comply with an EBA is subject to action under the Fair Work Act. If they're unclassified, to use your word, and working to award conditions, they can

report underpayment to the Fair Work Ombudsman, for instance, and have action taken that way. So I'm just not quite clear what the issue is that you are articulating to me, if that's helpful to you in steering your answer.

Mr Dawson: If an employee goes to the Fair Work Commission and is found to have been underpaid, then they have to go to a magistrates court to enforce that—the Fair Work Commission can't enforce underpayments—so it's a costly exercise for an employee. I think the Fair Work Act needs to be strengthened so that the Fair Work Act can enforce it and if someone doesn't pay it then they can be fined within that system. It becomes a costly exercise to recover moneys under an award or an EA when the company refuses to abide by the Fair Work Commission. I think that could be strengthened. You're right; there is that ability within the act. But, as I say, I question some of the powers of fair work. Owner-drivers are independent under the act. It probably doesn't have the power it does, and it can be a costly exercise for a small business person to use that. The majority of owner-drivers in transport probably don't have a written contract. A lot of them are engaged on 'as use'. Even if they are engaged by a major company, a lot of times they don't have a written contract; a lot of the times it's verbal. It becomes difficult then to police that or go to an area where you can actually take up the case for them or where they can take up their own case, and, as I said, it can become quite expensive. What we would like to see is an inexpensive system that allows small operators, the majority of whom would be single operators, to take something—somewhere that is not time-consuming or expensive. That would make it much easier for them to remedy the problem that they have.

Senator SMALL: Why is so much work being undertaken within transport—the heavy transport sector, more accurately—without contracts in place. I would have thought that was pretty foundational. It's certainly not something I've seen anywhere else in industry, in the contemporary sense.

Mr Dawson: I don't know; if I'm a plumber and I'm doing some work for someone, they usually ring me up and I go and do a bit of work. So I don't think it's unusual. But, in transport, a lot of it's done by word of mouth; a lot of it's done by phone. If someone has a load to deliver to the north-west of Western Australia, they may well engage. A lot of them will do overflow work, so they're not always working for one company. If the company has some overflow work and they need an extra truck and they don't have one within their own business, they might ring an owner-driver and say, 'Can you do this?' and they'll just go and do it for them. They'll say, 'I'll pay you X per kilometre,' or, 'X per trip,' or whatever it may well be. Sometimes, after the work's done, they don't quite get what X was. It is not uncommon in our industry for owner-drivers to do work and not have a written contract.

Senator SMALL: Maybe I'm unique in getting written quotes from plumbers before I use them, but that does seem an unusual thing. I need to think about that some more. In terms of the tribunal that you're calling for, are you referring to something like the Road Safety Remuneration Tribunal?

Mr Dawson: Whether it's that or something different, I think a tribunal needs to have the power to be able to enforce what they see as wrong. There were issues with the RSRT and the RSRO. I think we threw the baby out with the bathwater with that one. I think, a number of years down the track, we'd have a good system with a tribunal. Would it look exactly like that? I doubt it very much. I think people have moved on from that. But we definitely need an independent tribunal that small transport operators—or large ones for that matter—can go to. If there's been any misconduct, unconscionable conduct, that has forced them to sign a contract that is not fair and reasonable and doesn't give them a safe or sustainable rate so that they can recover their costs, they need somewhere to go. The only way we can do that in our industry is to have a type of tribunal that can do that.

Senator SMALL: Maybe I'm being conflicted, but as a final question I want to put this to you: if every truck driver refused to work without a written agreement on how much they were going to be paid, surely that would be a more efficient way of resolving these disputes, because you could point to it and say, 'This is the contract that we entered into.' It wouldn't have to be written by a lawyer. A simple e-mail between parties is evidence of that agreement. I just don't see why government, per se, needs to step in to address something that seems fairly elementary on the face of it.

Mr Dawson: If they all stopped tomorrow when they didn't get the right rate then the problem would be fixed, but unfortunately that's not what they're doing. I'll put a bit of a scenario to you. He's got \$200,000 worth of truck. He's got a mortgage on his house and a couple of kids at school. The missus is at home doing the books for him—or the husband is at home doing the books, whichever one it may be. He hasn't had any work for a week, and someone rings him and says, 'Can you go from Sydney to Brisbane, and I'm going to pay this.' He says, 'That's not quite enough for what it's worth for the trip,' and he's told, 'That's all you're going to get.' Is he going to do it so he can pay off some of his truck and his mortgage and not worry about the rest of it, or is he going to stay sitting at home? I tell you what he's going to do. He's going to jump in the truck and pick the load up. He's going to do it because he needs to earn some money so he can pay off the mortgage and the truck. That's the reality,

unfortunately. Too many do that so they don't lose their house and, probably, their family. That's what happens. It's an unfortunate situation, but it's the truth.

Senator SMALL: I know I said that was the last one, but, on that exact point, I'm just curious. I'm a small-business person myself. Effectively, that's insurance against insolvency paid for by someone else. When you start a business, you take a risk. If you put, for instance, your own house on the line by mortgaging it to pay for a truck and all that sort of thing—small businesses fail in Australia every day, unfortunately, but that is the nature of a market based economy, and someone's always got to pay. That's a very different concept from an employee. That's not being paid what their agreement says; that's basically someone else bankrolling them so that these small businesses never go under.

Mr Dawson: You're right. I was an owner-driver myself for eight years. There are a lot of owner-drivers and there are a lot of people in business, whether they be truck drivers or whatever, who will go broke because they run a bad business model. This is not about protecting bad business models or bad business practices. I don't know what industry you come from, and I don't need to know, but the transport industry is a unique industry. We're about making our industry safer. We're not about propping up bad business models. We're not about bad business practices succeeding because we set a tribunal up. What we want to do is make our industry safer and sustainable, and that means that, if somebody who has made the right decision at some time to come in and run a decent business is in our industry, when the people at the top of the chain decide that they are going to tender work out and snip five, 10, 15 or 20 per cent off that contract to save money, that flows down until it gets to the owner-driver at the bottom, and then they start taking shortcuts. That means that they don't maintain their vehicle properly, they work long hours or they don't secure a load, because they're trying to do it faster than they should. We would then have the ability to go and make our roads safer. We would have the ability to make our transport workers safer so that their business would be a safe business.

If they decide to go and buy a ten-acre property and go on an overseas trip every year and expect their business to pay for that and it doesn't and then they start going broke, that's a decision they make. We're not there to say that we need to prop them up. What we're saying is that we need a safer and sustainable industry, and the only way we see that that can be done is by having a proper, legitimate tribunal that says, when someone is being unconscionably dealt with—when a big retailer or mining company says, 'We're going to snip this much out of our contract and force that company down there to take a cut, to sharpen their pencil further than they should, and the only way we're going to do that is use owner-drivers and small business to make a dollar'—that that's not right, and I don't think you would think that's right. As I said earlier, our families are on these roads. These roads need to be made safer. With the trucks, we need to make sure that it's not because someone is forcing them to take a shortcut, because then the drivers are unsafe. I don't think you'd want that. I know I don't want that, and I tell you that, when I talk to owner-drivers and truck drivers, they don't want that.

CHAIR: Mr Dawson, I want to go to a couple of questions. I want to follow through on the issue of safety implications for owner-drivers when they are under pressure to deliver contracts under cost. You gave the example of people being slave to debt and making those sorts of decisions or slave to the market, in the sense of having to take whatever rate as a pricetaker rather than a pricemaker. What are the consequences in road transport, and what are some of the examples of where this can have dire consequences for our community?

Mr Dawson: I suppose an example is where I'm working for one of the majors on a retail contract. I've signed off on my contract and I've been there for several years—in some cases 20 years—making a reasonable living. Then, all of a sudden, the retailer at the top says, 'It's time you renewed your truck.' So I go and buy a new truck. I sign a new contract for another five years because the truck is going to last. Then, all of a sudden, the retailer or the mining company comes along and says, 'For us not to go to tender, you'll need to give us another contract, but you'll need to snip X out of it.' The big transport company agrees to that and then goes to its subbies and says, 'We've had to do this. We had no choice. We were forced to cut our rates, so you're going to have to give us some back.' So what does the subbie do? He's going to try to survive on a lower rate. What he may do is take shortcuts, so he may not maintain his truck, he may not service his truck as regularly as he should, he may not change the brakes or tyres over as regularly as he should, or he may work longer hours to make a dollar. They're the things that have happened in our industry and, unfortunately, those people are on the road with us and our families. That's what the reality is, and that happens every day in our industry. A person can sign a contract and can be a really good business person for a long period of time, but overnight, in a very short period of time, that pressure can come on them and they can feel they don't have a choice—and sometimes they don't have a choice. So, yes, they'll take less money, but they'll look at other areas where they can sharpen their pencil. And I'll tell you that, when then sharpen their pencil, it ain't their profit line. Their sharpening their pencil is making our roads more unsafe.

CHAIR: If we go to a different matter, the Western Australia government awarded a contract for the operation of prison vans. The TWU has coverage of those drivers. Since the contract was awarded, what kinds of issues have been seen to arise in terms of pay conditions and safety for those drivers? Is this another example of supply chain pressure?

Mr Dawson: Yes, it is. In 2016 there was a change from Serco to Broadspectrum in the contract to cart prisoners around and guard the courthouses throughout Western Australia. Probably 90 per cent of their courthouses and all of their prisoners were carted from prison to courthouse or from courthouse to courthouse or from prison to prison or to funerals and so on. The life of that work was about five years, and it's about to go back to tender shortly. Thirty million dollars was taken out of that contract. We believe and have seen that that's led to Broadspectrum actually now contracting out some of that work to a security company that brings people in to guard prisoners, and these people from the security company are not trained to the same level of adequacy that Broadspectrum people are. At times, they tend to use fewer people on the sits. We've had a number of escapes which we believe can be put down to not putting enough guards on with the high-risk prisoners so they can be adequately guarded. We had a high-risk one on a hospital sit who didn't have enough guards with him and he escaped. They're now really struggling to find enough people in the regional areas, especially in the north-west, where the cost of living is extremely high. They used to get a reasonable allowance for living in those areas to make up for the cost of rent and living there. That came out of the agreement. The way they did the agreement was they negotiated with three people in Victoria to do a national agreement and that agreement then became their agreement in Western Australia. Those three people never came to Western Australia. I don't even know if they continue to work with Broadspectrum. That became their instrument of employment. It which took 20 to 25 per cent out of some levels of wages. It took us a number of years to get some of those rates back up. It's been a hard fought battle and the company now struggles to engage people to do the work. It puts everyone at risk when prisoners are being carted around. So it's not always about money. We need to realise that, when work goes to tender, it shouldn't be the worker who suffers. Why should the worker have to take a lower rate of pay because companies and governments want to save money?

CHAIR: Just on that, would it be an effective proposition if you are able to bargain with them, whether as a retailer, a mining company or a government, or would we determine, as economic employers—the ones that actually set the—and, in effect, through that cost model, to effect the conditions and safety arrangements? Is that a plausible option?

Mr Dawson: We need to have a system of law that says that, when you tender work out, if a company wants to save money and wants to do the work more cheaply than the incumbent can, then it shouldn't be that workers get done. We need laws to say that workers are protected. If a tender goes out, current wages should be quarantined and left there. If someone wins it, then they're the wages and conditions that they pay. That's a prime example, and that was a government contract at the time. People were losing \$4, \$5 or \$6 an hour. That's how much their rates went down. It was a substantial loss of income, all because a company was willing to do it more cheaply and the government was willing to give it out for less. We see that regularly when work goes to tender. There's a retailer who did it here recently. Their wages were significantly lower than the company that was doing the work, and that company lost the work. You don't save much on trucks and maintenance and all that, but they saw that they could save money on wages, so that's what they did. I don't think it's the Australian way. I don't think it's the right way. Surely we could have legislation that protects people from that.

CHAIR: Thank you for your evidence today, Mr Dawson. Your evidence will assist the committee in its deliberations and the preparation of the report. If you've taken any questions on notice, please provide responses to the secretariat by 10 August 2021. Thank you again for your time.

Mr Dawson: Thank you, and thanks to all the senators for the questions. I really appreciate the opportunity to put forth our concerns on behalf of our members and transport workers.

BRUCE-TRUGLIO, Mr Stefaan, Senior Policy and Advocacy Officer, Youth Affairs Council of Western Australia [by video link]

RYCKEN, Mr Luke, Executive Officer, Australian Youth Affairs Coalition [by video link]

[16:06]

CHAIR: I'd now like to welcome representatives from the national and state youth peaks. Thank you for joining us. The national and state youth peaks have lodged submission No. 63 with the committee. Would you like to make any amendments or additions to your submission?

Mr Rycken: No, but we would like to make an opening statement.

CHAIR: I'll give you a chance in one moment. Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I'll now invite you to speak for a couple of minutes. At the conclusion of your remarks, I will invite members of the committee to ask questions. If you have prepared a longer opening statement, you may email it to the secretariat for incorporation into the *Hansard* and distribution to senators.

Mr Rycken: Thank you. I'd like to begin by acknowledging the Wurundjeri people of the Kulin nation, from whose lands I am joining you, and pay respect to elders both past and present. I'd also like to extend that acknowledgement and respect to all Aboriginal and Torres Strait Islander people who have been caring for this land and young people for at least 80,000 years.

The Australian Youth Affairs Coalition, from where I'm joining you, is the national voice for 4.5 million young people across Australia and for the youth sector. We're here today on behalf of the millions of young people across the country who make up more than 21 per cent of the working-age population. Young people are healthcare workers, they are essential staff in supermarkets and shops, they are farmers, they are gig workers, and they are students and volunteers. Today, they are increasingly likely to be employed in casual and insecure work. We want to tell their stories—like Edward, who grew up in a rural community and moved to a capital city for university, where he spent months seeking a stable job and income, or Rachel, who came to this country as a refugee wanting a new future. She volunteered and completed traineeships, but she experienced constant racism at work. As a casual employee in the security industry, she did not have the necessary protections and was left without a job. We also want to tell the positive stories—like Emma, who studied part time while working and, after countless applications, was offered a job in a government graduate program and got a start.

We cannot discuss job security and the future of employment in Australia without discussing COVID-19. Young people have been the hardest hit by the economic impact of the pandemic and the ongoing lockdowns, which are continuing today. The pandemic is creating an economic crisis for young people, which will continue for at least the next 10 years without intervention and will affect young people for the rest of their lives. Young people will experience worse employment prospects for a significant period of time, and those who do find work will still experience less job security, fewer hours and lower wages. So today we'd like to discuss what meaningful work, better job security and real income support can mean not only for young people but for the entire country.

We believe we should be aiming for a future where everyone can access a meaningful job, steady income and safe place to call home. To achieve this we believe this committee, governments and the entire community must have a focus on young people and how we support them to access that secure, stable and meaningful work. Thank you. We're happy to answer any questions.

Senator SMALL: Thanks for your time today, gents. My apologies for not having my camera on. My connection is not coping with first weather, it seems. In terms of recovering from COVID-19's health and economic impacts, in the latest data the unemployment rate nationally was recorded at 4.9 per cent and the youth unemployment rate at 10.2 per cent, which was its lowest in more than 12 years. In aggregate casual employment has, as we've consistently heard through this inquiry, remained at the national level at about 25 per cent of the labour force since 1994. So the data is telling a different story to what you are putting to the committee. Why do you think that is? Whilst individual stories can be particularly moving, empirical decision-making at the national level requires that we do make evidence informed decisions on policy. So I'm looking for your insight there.

Mr Rycken: We're a big believer in evidence based policy, and you're right: the unemployment rate has decreased, which is a great thing. It's down to 10.2 per cent, which is the lowest rate in more than a decade. I will note that it is still more than double the general unemployment rate, which is as you mentioned at 4.9 per cent. It's important to state that that peaked in July last year during the pandemic at 16.4 per cent. But the unemployment rate doesn't tell the whole story. The underemployment rate for young people is currently 16.2 per cent, which

means that there are 347,200 young people who are currently underemployed across Australia. That's more than double the rate of the general population, where it is 7.9 per cent. It means there is a huge amount of young people who are part-time employed, who need more hours, or who are full-time employed and working less than 35 hours. So while unemployment being down is a good thing, we're still incredibly concerned about underemployment and that shift in employment scenarios for young people. Again, as we hear from plenty of young people right across the country in every jurisdiction, there are really, really difficult experiences of unemployment and insecure work that are meaning, potentially, there are people who are employed but are still having a really difficult time.

Senator SMALL: You are singing to the choir a little bit in terms of the importance of the meaning of work. It's something I'm very passionate about. But it would seem to me to be a little bit perverse to at one point be pointing to the very real problem of underemployment, and, indeed, the still very high rate relative to the overall populous of unemployment, but then be calling for further restriction. A furthering of flexibility in the marketplace would ultimately in my view would deliver better outcomes for all labour market participants, including young people. So can you maybe get to the specific reform that you'd like to see and how you see it playing out in the labour market?

Mr Rycken: Yes. Stefaan, do you want to jump on that one first?

Mr Bruce-Truglio: Sure. Firstly I'd like to acknowledge the traditional custodians of the land on which I'm meeting with you, the Wajuk people of the Noongar nation, and pay my respects to their elders past and present. In terms of referring to the flexibility of work compared to underemployment and unemployment, I think that young people that we've spoken to and the broader evidence we've heard have shown young people, particularly those most vulnerable, value the securities and stability of work higher than flexibility. I think we can have discussions around guarantees security and stability whilst also maintaining a flexible mindset. If we go back to looking at the ways we support young people to find jobs through jobactive and mutual obligations, in particular, these are very often very rigid pathways that often force people into very rigid circumstances of insecure casual work. With mutual obligations, young people are forced to apply for a certain amount of jobs to be able to continue receiving benefits. But often, being so vulnerable and under severe housing stress, which we know has been something that has increased throughout COVID, they're not given the time or the support to have the flexibility to discover and find those jobs that suit their career aspirations and also suit a more long-term stable career path. So I think, in terms of that flexibility, at that level we would like to see a more flexible look at the way we approach supporting young people to find jobs through a more individualised, personalised approach that matches young people's career aspirations to what the growing demand in the market is. I see that as a key part where we can balance our flexibility with that security. Luke, did you want to add anything to that?

Mr Rycken: No, I think that's great.

Senator SMALL: On the two issues you raise there, in one sense, we do have good news from a government perspective in that changes to mutual obligations in recent times have allowed, for instance, students to undertake study—with a view to that being the chosen career, future vocation or whatever—to effectively meet their mutual obligations through the course of that study, thereby eliminating any requirement of the job application under the system. That's a very sensible change. It's been made to reflect the fact that, for that cohort of young people, study is the best thing that they can be doing in their personal circumstances to set them up for success. It's also satisfying the social contract that we have with those young people in exchange for that support from the taxpayer—that they've already met their obligation.

On your point around this desire for safety and security, I'm curious on where the data comes from for that contention. For instance with Uber—just cherrypicking one example of the submissions that we've had, but it's one that stuck in my mind—83 per cent of their driver-partners, or whatever the term is, rated stability as the No. 1 driver for participation in the gig economy. That was a survey sent to all of their 100,000-odd partners, and some 18,000 responses were received. So statistically it's credible. It points to this idea of people, particularly young people, wanting to fit work around life rather than life around work. Do you have a view on that?

Mr Rycken: Yes. Unfortunately there is no journal of Uber, so I wouldn't be placing too much faith in a study, or any survey, conducted by one single organisation where they have a significant vested interest. That being said, I do appreciate that all people, not just young people, might appreciate some flexibility in their working arrangements. I know that many of the young people that Stefaan and I have as friends and colleagues, those that we work with, are studying, and they're going through a period of study in which flexibility is helpful, particularly in ours. But that does not negate the need to have meaning in that work and also to have safety and security in that work so that they can afford rent and afford the necessities even when they do not necessarily have a specific nine-to-five structure. Again, because of that increase in casualisation for this particular age group of

young people, it is very likely that they will be forced into positions where they are not working, generally, a nine-to-five job. That means we need to have some sort of structure or system in place so that same security that is afforded to people in other, more secure work is afforded to those young people too.

Senator SMALL: What data are you pointing to? Ultimately, the HILDA dataset collected nationally doesn't point to an increase in casualisation. You're saying, 'I can't believe a survey conducted by Uber,' never mind the fact that that's reflective of all of the large employer groups, whether they be more traditional or gig economy focused, who have flexibility as something they hear from their people. I can accept that there is always a self-interest element at play, because that's the horse that's trying, as the expression goes, but what are you pointing to as evidence to counter that and suggest that somehow the story that we see play out in the national statistics is not right?

Additionally, what actually is the specific reform you are calling for? Overwhelmingly, it seems to me, young people, particularly where they're balancing work around other responsibilities, whether that's study, caring, sport, music or whatever their passions are, invariably don't want a nine to five. In fact, they want work that fits around it. They actively chase work under awards that is at non-traditional times—later in the evenings, for instance, or on weekends or public holidays, because of the higher loadings that that work receives. Anecdotally, I run a bar, and that's absolutely my experience. So what are you pointing to? I'm really looking for something empirical.

Mr Rycken: I will answer the first part of that and then hand to Stefaan for the recommendation. The data we are pointing to in the first instance, which was included in our submission, is that more than half of workers aged 15 to 24 are now employed through casual contracts. That was from a discussion paper from Per Capita in 2020. I believe they were referring to ABS data when putting that together.

Senator SMALL: That's subsequently been disproven, by the way.

Mr Rycken: We are very happy to have a look into that and provide some more specific data on notice, but that has generally been our understanding and is generally consistent with some other position papers from groups such as the Grattan Institute about increasing casualisation for this particular age group. The other thing I would say is that, as you pointed out in your anecdotal evidence, generally young people are included in industries such as hospitality and the arts, where casual contracts are more prevalent, so generally it is the case that young people in this age group, by nature of the industry they're in and their working circumstances, are usually in casual contracts. I will reiterate again that these ideas are not mutually exclusive. Someone can have flexibility in their work and also want to have secure, meaningful and safe work which delivers benefits and income that enables them to live safely. That does not necessarily mean that someone who is on a casual contract or who cannot work nine to five does not deserve those things. They absolutely do and they should have the income to back them to afford a house and afford the essentials.

Mr Bruce-Truglio: I will add that, whilst flexibility is consistently an important thing that we've heard young people value, what we've heard more from our discussions with those who are particularly the more vulnerable, those working very-low-paid and insecure jobs or who are on JobSeeker, looking for employment and suffering housing stress, is that flexibility takes less precedent when they're looking for a job that provides week-in, week-out food on the table. If you are working for Uber or a job where your shifts can be cancelled without notice and then you can't pay the bills that week, you're looking at losing a house, not being able to buy food, not being able to afford medicine or things like that. Those are consistent discussions that we've had with our members throughout the development of the submission and our COVID recovery framework, which we developed last year and which we also provide to the committee.

I would like to reinforce the idea that these things are not mutually exclusive and that, when we're talking about providing secure work at a level for more vulnerable young people, we need to be developing pathways that encourage them to pursue career aspirations in long-term sustainable industries rather than forcing them into any job they can find, which can often mean that they are forced to take whatever work goes in front of them to put food on the table while sacrificing their ability to develop skills.

That's where we come into the idea of a youth guarantee, which is about redeveloping our youth employment system for young people to ensure that it is a community-based, person-led system that provides those long-term career pathways and develops the job market for those young people to get into. We also see that, whilst there is a lot of emphasis—welcome emphasis—on improving training and education in certain industries, we find when it comes to growing industries such as the care industry that these industries chronically suffer from low pay, insecure contracts and generally not attractive working conditions. There are a lot of young people who are training who want to get into jobs that are insecure. That level is where the security takes precedence.

CHAIR: Your submission refers to low wage growth. Of course, over the last eight years, the Australian economy as a whole has suffered the slowest wage growth on record, and real wages are forecast to decline over the next four years. How has that impacted young people in particular?

Mr Rycken: Obviously, low wage growth has a real impact on young people. We spoke with a number of young people before coming today and had some really interesting conversations about the real-life impact for them. For Edward, a young person who originally grew up in rural Victoria and moved to a capital city for university, it meant they were really struggling to afford housing and it made it more difficult to continue with their studies. For Ali, who is a young person who originally moved out of home and got casual work after quite a long and difficult period of time, it meant that at some point they had to just make the call and move back home because the income they were getting wasn't enough and the job they had wasn't enough to provide a safe home for them. That's the real-world impact that we see the young people.

I make one note that is related to COVID-19, which is that evidence from previous recessions, particularly the recession of the nineties and the global financial crisis, and some work done by both economists and social researchers in that area, show that generally young people who grow up in a recession have a really bad time. It's generally referred to as 'economic scarring' and it stays with them for the rest of their lives. It generally means they experience less job security, fewer hours of work and lower wages for the rest of their lives. There are some studies that have shown that this continues all the way into retirement. Low income and, by extension, the low income and wage growth we have seen over the past year in Australia means that we're going to have an increasing number of young people, particularly from this generation going through this particular recession, who are going to have a terrible time. It is going to impact them for the rest of their lives.

Mr Bruce-Truglio: I think the low-wage-growth aspect of this has a significant impact on the ability of, in particular, our most vulnerable young people to get long-term, secure and stable jobs, because when you are in poverty or when you are suffering from severe housing stress it is incredibly difficult to balance training and gathering those skills with working to put food on the table and to balance your mental health needs and access the support you need.

We look at rising housing stress. The number of young people in housing stress more than doubled between 2003 and 2011. There has also been a significant growth in disparity of intergenerational wealth, with most of the gains in wealth in Australia in the past 30 years concentrated in older generations. So it's clear that young people are bearing the brunt of this low wage growth. It is particularly affecting young people in casual and part-time jobs, who are often forced to work multiple jobs to survive. You then get the gig economy, which has a significantly high proportion of young people, where a lot of people are not governed by minimum wage laws at all, so their wages are actually going lower than what they should be under our laws and standards. Couple that with the fact that JobSeeker has returned to below the poverty line, meaning that, whether they are on JobSeeker or they are in casual work, these income streams are not matching today's costs of living and today's housing needs and this in turn creates incredible strain on these young people.

CHAIR: Thank you for that. In light of the evidence you have been giving this afternoon and your submission, what's your response to a phrase that's been being used by some of the participants and also some of the submitters earlier today—that is, saying that 'any job is a good job'.

Mr Rycken: That is absolutely not the case. Obviously that is not the case. A job needs to provide some minimum things for someone to actually get what they need out of it—that is, a safe and stable income that enables them to buy the things that they need. I recognise there might be some people who have multiple jobs and pull together a wage out of that to afford those things but, realistically, what we are talking about here, the experience for most people, including young people, is they will have one job and that job should provide, through sufficient hours and through sufficient and lawful pay, the income that is required to live a comfortable, safe and secure life. That at the moment obviously isn't possible for a huge proportion of young people who are currently in lockdown across three states across Australia. So when we talk about employment, when we talk about secure work for young people, we also have to consider our social security and income support system to ensure that that realistically provides backing to young people who might not have that support.

Mr Bruce-Truglio: I think that's a very simplistic look at a very complex problem—that every job is a good job. The purpose of a job is to provide safety, security and stability to a young person, not to just be a purpose in and of itself. If you look at the rise of underemployment, as a key example, it means that job is not providing for a person's needs and they are seeking more hours but they can't find those. There is a significantly high proportion of young people who are underemployed. If young people are working multiple jobs, it means one job is not enough, which leads them to give up and sacrifice so many other aspects of their lives, in particular, mental health. Over-working and burnout is a huge issue amongst young people. I think that also ties into the idea around

mutual obligations. They are forced to take whatever job they can seek, which might be good in the short term and is sometimes useful for some people. But, for others, it's creating a cycle where they are stuck in the churn of multiple casual insecure jobs and are unable to have that time to build up the skills required and find those employment pathways into the career they desire. I think that is a crucial issue as part of this area that we are talking about.

CHAIR: We received evidence early on in hearings in the past weeks from the retail sector, which is a major employer of young workers. The CEO of the Australian Retailers Association, Mr Paul Zahra, gave evidence to this inquiry back in April. When asked about workers being paid as little as \$6 an hour—below minimum wage—with no superannuation, no annual leave, no reinstatement rights, no collective bargaining rights, and specifically regarding delivery food workers for Uber Eats and Deliveroo in the middle of the pandemic, he said, 'That's what the individuals sign up for. That's what the contract is. That's their choice.' Do you agree with Mr Zahra, that young people in retail, in the gig economy, are enthusiastically signing up for those work conditions?

Mr Bruce-Truglio: No, we don't agree with that. That is not what a young person nor anyone in this country signs up for when they join the retail sector or any sector for that matter. I lost count of the number of young people I've spoken to over the last few years who have experienced wage theft, particularly those who work in retail and hospitality. Personally, I have experienced that. I've had family members, I have had friends and I have had colleagues who experienced that. If you ask a young person in Australia, they will know someone who has experienced wage theft. It is absolutely the responsibility of our entire community to ensure that that doesn't happen. I believe this committee should take a very firm stance in ensuring that people who sign up to work are supported, that the laws in place are not only appropriate but are in force, and that young people who are in employment are supported as best as possible, so that they don't have to go through this absolutely awful scenario.

I should say that, generally across the country, there are some organisations who do great work in supporting young people to understand their employment rights and, in doing so, have been able to support young people. But the obligation is not on a young person to ensure that they are being paid appropriately and that their rights are being upheld. It is the responsibility of an employer to make sure that they are paying the correct wage, to make sure that they are paying the appropriate amount, and to provide the right circumstances and environment for someone to work in. I know that that is something that you may hear differing evidence on. I have spoken to plenty of small business owners, plenty of employers, plenty of large businesses who managed to do that every single day and who employ a large number of young people. That is absolutely a minimum standard.

Mr Rycken: I think that is a fundamental insult to the egalitarian ethos that our workplace laws and our culture in Australia are supposed to be built on—that quality of a fair go and that people are going to be treated fairly when they enter an agreement with an employer or with the state.

As Luke said, wage theft is rampant among young people and also across key industries such as retail and hospitality. In the gig economy, young people and others are being paid below the minimum standards, which are meant to be the legal protections for workers to be paid what is owed to them. When you talk about casual roles, the idea is that they will be compensated with penalty rates and other things to make up for the lack of leave pay and other things, but recent studies, including one on household income and labour data, found there was no long-term cumulative benefit in pay for casual workers. They usually used to get around 25 per cent casual loading but, when you look at that across industries, it is not always necessarily the case. Those entitlements—leave and others—which they are sacrificing are not always met by the required amount and loading fees. I think that is fundamentally unfair, as it is our right as Australians to be paid and treated equally in the workplace.

Senator CANAVAN: Thanks for your evidence. I want to go to your submission. In one of the recommendations I think you talk about abolishing mutual obligation requirements and replacing them with a partnership approach. Would this mean that there'd be no penalties for someone on JobSeeker—if they didn't do certain things, they'd still get JobSeeker under your proposal?

Mr Bruce-Truglio: That's not the crux of what we're proposing. The idea of replacing mutual obligations with a partnership approach removes this idea of a top-down approach where there's a mandated set of jobs per month, or whichever it is, that they need to apply for and, if they don't meet that, regardless of circumstance, unemployment benefits will then be cut off without any room to manoeuvre. I think that, if you work in partnership and you empower individuals to work with the right supports, they will then feel more motivated to reach those goals, knowing they are working towards something that they feel like they're in control of and they are able to find and develop skills and education to reach those employment pathways. In terms of penalties, I think that would be worked out based on the circumstances of the individual and the agreement that they make with their support worker, who would help them to develop a career plan. But, as it stands, given the current way that mutual obligations work, they are becoming more of a barrier to long-term secure employment, rather than

helping, particularly for those most vulnerable, who are dealing with a whole other range of issues on top of having to meet those requirements.

Mr Rycken: I might add—

Senator CANAVAN: I just want to clarify the question so we can get to it, because I've only got three minutes or so left. The key thing is: do you think there should be obligations on people who are receiving government assistance for being unemployed? And, if they don't reach those obligations, whatever they may be, should they lose their benefits?

Mr Rycken: I think the most important thing here is that we all have a goal, which is that people have secure and meaningful work. To do that, a punishment approach is really not the best approach. People need individualised support; they need a partnership model, as Stefaan has highlighted. Really, what we should be doing is working with individual people, whether they're a young person or an older person, and supporting them to find work in a really, really difficult time. When someone is looking for work, there are a range of factors that come into play and come into their lives and impact upon how successful they will be. It might depend on their place geographically. If they're living in a rural area, of course there are going to be a particular set of employment opportunities available to them. As we were discussing before, it might be that they are studying part time and they are only available to work for a particular set of hours. What we're really focused on is taking an individualised approach which supports people so that they can get the best outcome, which we will all share, which is that people should have secure and meaningful work. We think that, realistically, based on the range of people to whom we speak, there is a really broad set of circumstances that people are faced with. In rural areas, we speak to young people constantly who are really limited by the amount of jobs that are available to them. In those circumstances, there's no point telling a young person growing up in a rural area, 'You should go and work for this particular company,' if they don't actually have an outpost or a business offering in that particular area. So, of course, it makes the most sense that we provide individualised support in that context. That also doesn't really consider the fact that a lot of people, regardless of age, have a number of life factors that may determine how readily able they are to get a job or to look for a job at a particular time. It might be that someone is having an experience of mental ill health. It might be that they're dealing with a global pandemic and are stuck at home. Those things really impact on the way that they are able to look for work.

I will backtrack on one thing very briefly. We were discussing casual work earlier in the hearing. I have a quote from the Parliament of Australia and its research team. It states:

While some casual employment is regular and long-term, in short-term casual work, young people account for 46%, while only constituting 17% of the labour force.

So again I want to emphasise that, yes, young people are particularly impacted by casual work and that, if we're going to have a response and a strategy as a nation and as a community to make secure work, young people absolutely have to be a priority. Stefaan, do you want to add anything?

Senator CANAVAN: I've just got one more question.

Mr Bruce-Truglio: Yes. Can I just add one quick thing to that. If we reframe this idea—

CHAIR: Excuse me for a moment. By all means, please keep giving your evidence, but I think Senator Canavan just wants to clarify something

Mr Bruce-Truglio: I apologise.

Senator CANAVAN: I just have one more question, that's all, and I realise we're already now at the end of the time. My question before was actually a yes or no one. If you could keep the answers relatively brief, that would be appreciated.

Mr Bruce-Truglio: Okay.

Senator CANAVAN: Did you want to add anything, or had you finished?

Mr Bruce-Truglio: Sorry, I thought you were asking a follow-up question.

Senator CANAVAN: I am, but I was also giving you the liberty of adding something, but could you keep it brief.

Mr Bruce-Truglio: Brilliant. Thank you. I wanted to quickly reframe this idea of punishments. Instead of looking at how we can punish and penalise this person for not being able to meet their mutual obligation requirements, we should reframe it as what are the barriers to their being able to undertake useful requirements and how can we support them to meet those, because people do want jobs. The vast majority of people are not going to be slacking of just because they don't want to do them. I think we need to work together to find out what those barriers are and meet them in a collaborative way.

Mr Rycken: If I can add one thing, sorry. There was just some really good research done by Swinburne university last year when mutual obligation was essentially put on the backburner. That found that, generally, recipients had more time to focus on things that enabled them to advance their job prospects during that time of no mutual obligation. Sorry, Senator

Senator CANAVAN: Okay, thanks. Your first recommendation in your submission is a national youth guarantee—to guarantee everyone a job or training for people under 25. Isn't that just a work for the dole scheme? Wouldn't we need just to expand work for the dole, and then you'd have your youth guarantee. Why don't we do that?

Mr Bruce-Truglio: I don't think the youth guarantee—

Senator CANAVAN: That would give people a job.

Mr Bruce-Truglio: is quite the same as work for the dole. As we discussed earlier, it's not just about getting people a job. We need to make sure that we provide the right training and support for people to find the jobs and careers that they want, rather than just any old job at all. We also need to build up the industries that are going to be highly in demand in the future. I talked earlier about the care economy and how it's one of the fastest growing industries in the country, yet it's still experiencing high rates of job insecurity and, I guess, a marketised approach, where rolling contracts are commonplace and wages are quite low. Yet we are still trying to, say, give young people qualifications and expect them to go into a career which is highly unstable and insecure. Also, providing people with any job points back to the point around mutual obligation requirements, which is that a lot of the jobs which young people would be forced to take are casual and insecure, and that does not lead to stable living conditions and stable employment. As part of the broader youth jobs guarantee—and I'm sure you've received Per Capita's discussion paper which lays it out extensively—this is a multipronged, cross-agency system that pairs state governments, the federal government, the community sector and the workers themselves in developing a system geared towards finding young people long-term employment rather than just Work for the Dole, which is a very narrow program.

CHAIR: Thank you very much for the evidence you've given today. It will be a great deal of assistance to the committee in its deliberations. We'll be taking those into consideration when preparing our final report, which is due to be delivered in November. If you've taken any matters on notice—I note that you mentioned a number of reports, which you're more than welcome to submit to us—please have your responses to us by 10 August 2021.

PHILLIPS, Mr Ken, Executive Director, Self-Employed Australia [by video link]

[16:51]

CHAIR: Thank you for joining us, Mr Phillips. It's good to see you again. It's been a while.

Mr Phillips: Thank you for having me. I think we bumped into each other in a corridor at Parliament House a while ago.

CHAIR: We did, yes! I note that you've given us a submission this morning—thank you for that. It's been circulated. Information on parliamentary privilege, the protection of witnesses and the giving of evidence to parliamentary committees has been provided to you as part of your invitation to appear. I now invite you to make a short opening statement, of no longer than two minutes, to allow time for questions. At the conclusion of your remarks, I'll invite members of the committee to ask questions. If you have prepared a longer opening statement, you may email it to the secretariat for incorporation into the *Hansard*.

Mr Phillips: Thank you. We take the very clear perspective that there is no such thing as a secure job. In our view, trying to create that is a figment of the imagination which I refer to as 'searching for a legal expression'. What people actually need and what they want is, in fact, continuity and certainty of income. How that's achieved in our society has a whole range of approaches to it. It's continuity and certainty of income, which we say is necessary and which people are looking for, rather than a secure job per se, because they don't exist.

Our focus in this whole debate, and we've been involved in it for around 21 years now, is, of course, the self-employed. The proportion of self-employed workers has been sitting at around 17 to 18 per cent of the workforce for a good 15 years or so. It's very heavily in the white-collar area and it's very diverse. You can't say there's one particular area, but the white collar dominates. The primary motivation of people, in our view, to be self-employed is to have control of their own working life. That is by far the biggest single motivation that comes through in all the surveys.

The focus of what we've been doing for 21 years is to look at the situation in very practical ways. For people who are self-employed, like me, by virtue of the nature of our work it would be described as insecure. We accept that. But the whole thing is then to say, 'How do you bring some level of stability and certainty in the marketplace to the situation we have?' We've looked at very practical stuff: We're very pleased that we have the small-business commissioners and ombudsmen and the vital role they play across Australia in simple dispute resolution processes. The unfair contract laws of 2016 were incredibly important, and we're very pleased to see those now being beefed up. The pay-on-time laws that are currently in the process of being implemented we see as absolutely priority No. 1. If there is one issue that every self-employed person and small-business person or some worries about, it is being paid on time, so we certainly congratulate the parliament on the initiatives in that area. We note the collective bargaining exemptions the ACCC is currently involved in—I haven't got my head around the detail of that, but the concept around it is terribly important to be able to collectively bargain a self-employed people within the framework of commercial law.

The area that we are currently focused on in terms of needing a lot of focus is the ATO. We see the treatment of small business by the ATO as being quite abysmal, and that needs to be fixed. It's the ATO that in fact creates a tremendous amount of uncertainty. It gets involved in business—just destruction for no end. One of the areas we haven't been campaigning on and really needs to be addressed which is always very surprising, I think, is that individual self-employed people don't have access to workers compensation schemes. You are not allowed to apply. You can't get in. You are blocked. That creates a problem from a public policy platform. I will leave it there, I think.

CHAIR: Thank you, Mr Phillips. Now to you, Senator Small.

Senator SMALL: To pick up on probably the crux of some of the arguments that have erupted in this space, it's really about whether individuals are free to categorise themselves as employees or independent contractors in a variety of contexts, whether that's in the disability care sector through certain platforms that permit independent contractors, through to the gig economy and, of course, your members in the broad range of diverse roles that you mentioned in your statement. Do you think this is an area that needs additional clarity? What are the risks inherent in taking any action as it goes to the ability of your members to be self-determined?

Mr Phillips: This debate in terms of the definition of self-employed or independent contractors has been going on—the history of it goes back tremendously, to the seventies and further on. I think the starting point in terms of answering your question is the approach of the International Labour Organization. I went to the ILO to attend the debates in Geneva in 2003 and again in 2006. The very question you're asking was the longest-running issue at the ILO. It was an issue that had been in debate for over 10 years before 2003. There was a significant

advance at the ILO, in that two things happened. First, in 2003 the ILO came to what's technically called a conclusion that self-employment is legitimate, which was rather nice.

The next thing that occurred was during 2005 in preparation for the 2006 debate. The ILO released what I think is the only global survey of the definition of independent contractors and the difference between contractors and employees ever undertaken. They surveyed some 78 countries around the globe, and the conclusion they came to in that report was that they were quite surprised at the level of convergence across the globe as to the definition. They were particularly concerned in terms of that report to see if there was similarity between common law countries and Latin law countries, and they found that there was. It comes back to the age-old thing of the common law definitions, the multiple tests available, and so on and so forth. It's a well-known and well-trying test, and well known particularly at the senior levels of the judiciary across the globe, according to that report.

Really the outcome of the 2006 debate was solidifying that situation. It was on the basis of that that the Australian Independent Contractors Act was formed, because Australia had signed up to the decisions that were made at the ILO in 2006. What we did in 2006 in Australia with the Independent Contractors Act was make it quite clear that the common-law approach to the definition of the difference between an employee and independent contractor is the way to go. That's what we have locked in at law. We support that wholeheartedly. It's one of those things where you look at the situation from where you sit on the line. When you are either self-employed or an employee, most of the time it's quite clear—people can see that—but it's where you get these fine definitions, the differences, that the debate starts to happen. Ultimately, it is only the court that can decide on this, because you have to take it in the multitest.

If you move away from that particular situation and you try to fiddle around with it, you get some anomalies popping up which really cut to the heart of the market based economy and the whole notion of contract and contract law and what a contract is, because the difference between an employee and an independent contractor is simply that an employee works under an employment contract and a self-employed person, an independent contractor, works under a commercial contract. The ILO report referred to it in the Latin countries as a civil contract. So it's a commercial or civil contract; that's the basis of the whole thing. When you start mucking around with it, you get some rather strange stuff.

Really, the big mucking around started in the 1960s with a Professor Arthurs in Canada, who wrote a thesis on the dependent contractor issue. He was really arguing that there was a definition that sits between the two. The ILO, in their 2005 report, rejected that completely. They dropped that whole notion of a dependent contractor. But one of the things that we've seen more recently, of course—I think it was in about 1996—is that the UK passed a law pretty much along the lines of the dependent contractor argument. That said that you could be an independent contractor but a little bit employed—the 'a little bit pregnant' argument. So the decision on the Uber case in the UK was a decision based around that 'little bit pregnant' thing, creating a third way. I note that the UK law was made before the ILO addressed the issue.

Really, what happens is that, when you create this middle bit, you wind up contorting commercial law quite dramatically, in that you contort quite dramatically the processes that happen within a market economy, and you get all sorts of weird stuff happening.

Senator SMALL: Excellent answer. Very fulsome. Thanks very much.

Mr Phillips: I've been around on this issue for a long time.

Senator SMALL: Evidently. What, then, is your view on the notion that independent contracting in the gig economy is simply a gateway to exploiting vulnerable cohorts of Australians?

Mr Phillips: I've always complained, being a self-employed person—me and my fellows always complained that we consistently exploit ourselves, and we keep trying to complain to ourselves, but we won't listen to ourselves. The funny thing about being a self-employed independent contractor is that we are both employer and employee. So, when you accept that you're self-employed, you live in a marketplace. I had retail shops at one stage. Thank goodness I don't anymore. I always remember thinking to myself one day, 'If someone, a customer, walks in and I serve them and so forth, there's nothing that says that they must walk in tomorrow.' And that's the reality of the marketplace that we deal with: people—the marketplace is people. But we absolutely accept and concede that what happens on occasions in the independent contractor space is that there will be definitions where engaging parties will say, 'All these people are independent contractors,' when, in actual fact, if you look from a common law perspective, that's very suspect. So you get all sorts of thing occurring in the space. The sham contracting provisions that were created around the time of the Independent Contractors Act are very important. We support those. It was part of the ILO decision in 2006. So yes, there can be a process to try and excuse exploitation by saying that someone is an independent contractor—in other words, sham contracting. With

exploitation we're really talking about underpayment—paying less than the people should be paid. That occurs in the independent contractor space—alleged independent contractors—and it also occurs when people employ people.

CHAIR: We've been asking a number of organisations who've appeared before us about their structures, where they receive financial support and, in some cases, their history. Can you tell me if this is true: the former Family First Senator Bob Day, who was also a former Liberal candidate for the seat of Mayo, was a founding president of your organisation; and the former Victorian Liberal minister Norman Lacy was also a board member and president of your organisation for many years?

Mr Phillips: Yes, and he was a very good chair.

CHAIR: And one of your board members, Lauren Sherson, was a Liberal candidate for Melbourne in the 2019 federal election?

Mr Phillips: Yes.

CHAIR: Would you say that, to some degree, your organisation's views are aligned with those of the Liberal Party?

Mr Phillips: No.

CHAIR: But the Liberal Party seems to be aligned to yours—is that what you're saying?

Mr Phillips: Put it this way: I hope they are, because we push them very hard to try and get those things. I'll quickly take you through the story of the unfair contract laws. I'm not sure if you were a senator at the time—I can't recall—

CHAIR: I wasn't, but I was a union official. When you're answering that question can I put it in this context and you might be able to address this at the same time. The Independent Contractors Act, in terms of protection from unfair terms in service contracts, at section 9(1)(f) talks about contracts that provide for remuneration at a rate that is, or is likely to be, less than the rate of remuneration for an employee performing similar work.

Mr Phillips: I will address that one first if you want and then go back to the other thing I was going to say about the unfair contract laws and the 'Are we an arm of the Liberal Party?' type argument. The Independent Contractors Act and the provisions you're talking of were tested reasonably shortly after the act came into being in 2006. I looked very closely at the first two cases that occurred there, and it really hasn't been used much since. The reason for that is that the first two decisions said that that provision of the act wasn't retrospective. You weren't able to make an application under the act and say, 'Look, I've been underpaid,' and then get a retrospective outcome—in other words, it only moved forward. Since those two decisions, the underpayments provision in the Independent Contractors Act has barely been used. So that's what's happened with that. I think the intent was very good, but it's the lack of retrospectivity that's caused those provisions not to be used.

I refer back to the coming together of the unfair contract laws. We campaigned on those for seven years. We were very pleased when the Liberal Party put that into their policy. When the first provisions of the act came up, there was a limit of \$100,000 to the contract value. We saw that as neutering the act. I have to say that I then worked very closely with the ALP, the Greens and the Independents in the Senate. I don't know whether the Liberal Party were pleased with us or not, but at that stage they had put in place a bill that we weren't happy with, and we worked very closely with the other parties in the Senate to get an outcome which was probably about 80 per cent of what we thought should be there. The next provision that's coming through will give us, we think, 95 per cent, if not more, of what we want. The long and the short of it is that our focus is on policy outcome, policy reform, and we will work with anyone that we can work with to get those outcomes. I have a very constructive working relationship with key advisers in the ALP at the federal level, and we sell our wares around the policy reform and are currently doing that on the ATO issue.

CHAIR: I just want to go to another question regarding the gig economy. The committee has received evidence that gig work has been paid as little as \$6 an hour and that the food delivery riders are being paid on average between \$10 and \$12 an hour. Those figures were supported by the TWU but are also supported by academics, including some from the Edith Cowan University. I note that Uber itself acknowledged that even at peak hours in Sydney its delivery riders earn less than the minimum wage. When I asked about how much the rider earned outside of peak meal times they refused to share that data. Would you be concerned, if the assertion is correct, that these highly dependent contractors are paid as little as \$6 an hour and receive no superannuation, no workers comp and no leave entitlements and have no right to collective bargaining.

Mr Phillips: First off, your categorising of them as dependent contractors is not factual, in our view. Also, I think that, if we can look back at the Victorian report which focused on the gig economy and so forth, we can see

from that report that around seven per cent of the workforce have earned an income from gig work in any one year. What is interesting is that report also highlighted that the number of people who were using gig work as full-time work was 0.19 per cent of the workforce. In actual fact, most people are essentially using gig work, including the delivery driver stuff, as pocket money. It's top-up income. So I think it all needs to be seen through that perspective. I take on board what you're saying about the pay rates. I haven't seen the research. I won't make any comment. I'd like to see more. One of the ways of getting involved in the arguments around outworkers, going back to about—I forget what the year was. At that stage, I had a tremendous amount of involvement in the Asian community in the Springvale area. I was running a jobs placement program and I knew outworkers exceedingly well. I know the claim at that time was about outworkers receiving \$3 an hour and so forth. I knew the people in that area. I was finding them other work and doing jobs and so forth. But there were a large number of those people who were putting their children through university. They owned very nice houses, thank you very much. The people who were involved getting low rates of pay, you might say, were far too frequently people who were also involved in the black economy—I knew this directly—and people who were also on social welfare. I think what you need to do when you're looking at these things is look at their immigration status, what they might be getting on social welfare et cetera. You need to look at the totality. But if there are underpayment issues, what would notionally be seen as underpayment, it should be looked at by the [inaudible].

CHAIR: Just so I can clarify, I'll put aside the assertion about pay as low as \$6 and the various studies that have said that it's \$6 to \$12, and Uber themselves in their own study saying they pay below minimum wage, if you're saying that you're not personally aware of them; I appreciate that. In what circumstance do you think it's appropriate that people doing food delivery and working for those companies get paid below minimum wage—on all the evidence so far, including from the company themselves—and no superannuation, no workers comp, no leave entitlements, no collective bargaining rights, no reinstatement rights? Do you think that's appropriate?

Mr Phillips: If I take out the issue about reinstatement and bargaining rights and all that sort of stuff, I'm not in—

CHAIR: You don't agree with that?

Mr Phillips: Sorry?

CHAIR: I just wasn't clear on your answer.

Mr Phillips: I haven't finished the answer.

CHAIR: Go ahead.

Mr Phillips: If we take out—what was the word you used; dependent?—the dependent worker, because I don't see them as a dependent worker; you can move on and work someone else. But in terms of the pay rise I don't have any argument with you about all that sort of stuff. The Independent Contractors Act makes it quite clear that there are minimum rates here. I specialise in working with companies who are looking at using independent contractors, and the baseline here that I'm involved with all the time is that, if you are paying below the minimum award rate, it's highly questionable whether the person will be an independent contractor or not at common law. One of the key identifiers at common law is a pay rate issue, because that comes to the question of whether someone has genuinely entered into a commercial contract or not.

I'm not in the business seeking to defend Deliveroo or Uber or any of the ride-shares at all on their pay rates. That's not something that we're going to get involved in—not in the practice of defending them at all.

CHAIR: I've got a bit of a cheeky question—

Mr Phillips: Surprise, surprise!

CHAIR: It's not as cheeky as it could be; I'll tone it down. At budget estimates in June, I asked the Attorney-General's Department how someone who makes \$6 an hour can pay for and proceed to pursue their entitlements, including a Federal Court case. Their advice was:

I acknowledge that they may not have the funding to take a legal matter, in which case they may want to have a look and see whether they want to join a union which can support them.

Do you agree with the Attorney-General's Department that if gig workers want to seek justice they should join their union?

Mr Phillips: Anyone can join a union if they like. If an independent contractor wants to join a union, they can go join a union. The issue with independent contractors is really the collective bargaining under contract law, under commercial law. Given your past role with the TWU, I'm very aware that the TWU was involved in quite a number of collective-bargaining applications. From recollection, there were concrete drivers in Queensland and various others. So, as I said before, in the opening statement, we're very pleased to see the ACCC making

collective-bargaining exemptions easier for the self-employed. I think that's a very good thing. I think it would be a very sensible role for unions to be involved in taking leadership around those collective-bargaining issues. I see nothing at all wrong with people getting involved in collective bargaining on pay rates and so forth with Uber and all the rest—very encouraging of it. And, I've got to say, if people wanted to use our services, we'd be very keen to do just that. I've got to tell you I have been involved in this issue before. I won't name the company, but it is a very large multinational company in Australia that engages a very large number of owner-drivers, and I've got to say their behaviour is appalling—absolutely appalling.

I am no friend, and we are no friends, of management at all. The behaviour of managers on so many occasions is, 'Screw you if we can.' The unfair contract laws and the pay-on-time laws really are nightmares for managers of many companies, particularly middle managers, who get their egos off and have budgets to meet by screwing people down. Take one example: if an owner-driver turns up to collect a delivery from the supplier and is made to stand around waiting for an hour before they can collect the delivery, as far as we're concerned the supplier should be paying them for that hour because, if the supplier is not properly organised to be able to make the delivery driver efficient, they shouldn't be in the business. We're no friends of managers here.

CHAIR: Thank you, Mr Phillips, for your evidence. What improvements would you envisage to the Independent Contractors Act to make it more accessible? One of the questions, of course, is the cost. There are questions about protections from potential retaliation et cetera. Can you just turn your mind to that: are there some improvements that you think could be made to the Independent Contractors Act.

Mr Phillips: No, we don't want to open any can of worms with the Independent Contractors Act. We think that we can achieve the sorts of outcomes that you're talking of through the other things, such as the dispute resolution processes. The small business ombudsman is doing an outstanding job. They run very cheap mediation services, and all the reports from them are that they get in excess of 80 per cent outcomes on that sort of stuff. As I said, the unfair contract laws need teeth. The recommendations of Rod Sims have been signed onto by all of the states quite recently, so we now have the bill that is supposed to be coming into the House, I believe, this year—that's if parliament is ever sitting. So we think you can address these sorts of issues through these other things. In other words, if you have a specific problem, we can see how we can address it. We think that the parliaments across Australia, in this policy area, have been walking down the right path in a very consistent manner, so we don't think there's any need to tinker with the Independent Contractors Act at this stage.

CHAIR: Thank you, Mr Phillips. There are a number of questions I would love to ask, but I will go to Senator Canavan. Thank you for your answers and for your time.

Mr Phillips: It is always enjoyable with you, Senator.

Senator CANAVAN: Thanks for your evidence. I just want to pick up on where Senator Small was earlier. I think you were talking about the different treatment of ride-sharing employees et cetera. I just want to clarify: are you saying that you think the common-law standard for what is a contractor is the best way to go here, and there's no need for legislation to clarify the employment circumstances of employees in the gig economy?

Mr Phillips: If you play around with the common law, you are walking into a nightmare. Just take California with their AB5. I don't know if you are familiar with the AB5 situation in California, but they brought in the AB5 laws on 1 January 2020, just before COVID hit. The policy of the Democrats is to take those laws national under what they call their PRO Act. The AB5 laws in California make it illegal to use independent contractors, and they have absolutely decimated the independent contractor sector in the United States. The stupidity of the whole thing over there is that the rideshare companies ran a big campaign during election time—proposition 26, I think it was—and in a completely Democratic state 60 per cent of the population voted to exclude rideshare from the AB5 legislation. Then they had every lobby organisation—lawyers, accountants and anyone with any grunt, even the Californian film directors association—lobbying like crazy to get themselves excluded from these AB5 laws.

The people who haven't had the political grunt to get themselves excluded from these sorts of laws have primarily and very heavily been work-from-home mums who have had their own home businesses destroyed. I am very familiar with the transcription industry—it's essentially a gig model, where 95 per cent are women who work from home doing transcriptions on a job-by-job basis. They work when they want and as they want, while bringing up their children and having their lifestyle and so forth. This has cut a swathe through it, and all the transcription business has been moved out of California. If you start playing around with these sorts of aggressive laws, saying that you want to muck around with the definition and move it away from common law, you start to crunch around with your economy and throw it off into all sorts of crazy areas. And, invariably, the very people who suffer the most on this are the most vulnerable.

This is one of the important things about the outcome of the ILO in 2006. It recognised and stated the legitimacy of independent contracting, based around the common law definition. It's terribly important, and Australia has signed up to it. So everywhere I see mucking around with this sort of stuff, I see significant distortions happening in the economy, and the people who get it in the neck are invariably the people who are incredibly vulnerable.

CHAIR: I thank you, Mr Phillips, for your evidence today. It will assist the committee in its deliberations and in preparing its final report. If you've taken any questions on notice, please provide responses to the secretariat by 10 August 2021. Have a good afternoon.

Mr Phillips: Thank you very much.

CHAIR: We thank the witnesses who gave evidence to the committee today. Where a witness has taken a question on notice, I remind them that answers should be provided by 10 August 2021.

Committee adjourned at 17:28