



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**(Reference: ACT government procurement)**

**Members:**

**MS C LE COUTEUR (The Chair)  
MR B SMYTH (The Deputy Chair)  
MR J HARGREAVES**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**THURSDAY, 4 MARCH 2010**

**Secretary to the committee:  
Mr D Abbott (Ph: 6205 0142)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Committee Office of the Legislative Assembly (Ph: 6205 0443).

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## **Privilege statement**

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*Amended 21 January 2009*

**The committee met at 9.34 am.**

**WORTHINGTON, MR TOM**

**THE CHAIR:** Good morning, everybody, and welcome to this public hearing of the Standing Committee on Public Accounts inquiry into ACT government procurement. We have a privilege statement, Mr Worthington, which you may have had time to read.

**Mr Worthington:** I have read it, and it appears similar to the Senate ones I am used to.

**THE CHAIR:** I imagine it is very similar; that may even have been its origin, for all I know. And you are happy with the implications of it?

**Mr Worthington:** Yes.

**THE CHAIR:** Have you any opening statement, or should we launch into questions?

**Mr Worthington:** I should say that I am appearing as an individual computer professional who lives and works in Canberra. I am not representing any organisation, although I am an adjunct lecturer at the Australian National University and a green course designer for the Australian Computer Society.

I just thought I would highlight the main points in the written document that you have got. Thank you for inviting me here today. There were three parts to the terms of reference that I wanted to address. Sustainability considerations in government procurement, training, and helping local suppliers were really the main things.

On sustainability, what I suggest is that the ACT government should work with the federal government, as well as state and local governments, on a common set of standards for procurement of government computers, that is, ICT, computers, telecommunications. The issue there is that it is difficult if different governments have different requirements, particularly in Canberra where the federal government is not that far away from the ACT government and the same suppliers will likely be supplying both.

I wrote this submission quite a while ago and by now we should have that set of environmental requirements from the federal government. That has taken a while. At the moment I am not entirely clear of the status of what they have got. The good news is that that means perhaps the ACT government has the opportunity to collaborate with the federal government on common requirements. I do not think the federal government has quite set what they are.

Also, what has happened is that in the last week or so bits of the environmental portfolio have moved from the federal environment department. Some of it has gone to the climate change department, and other parts, I found out yesterday, have moved to the industry department in terms of industry support for renewable energy and things like that. So exactly where this bit fits may be a little unclear just at the moment.

The federal government provides an online system for developing policies and processes, mainly for federal government public servants, but they do allow state, local and in fact public servants of other countries to use the system, and you can have an online working group of people from around the country working on developing detailed proposals and suchlike. So I suggest the ACT government could make use of that. People do not necessarily have to go to committee meetings somewhere.

In terms of procurement training, the obvious thing to do is to get the CIT to do some training. Recently I visited one of their campuses down south, and they have got quite good facilities. I teach green IT at the ANU and for the Computer Society. We do that entirely online—no face-to-face classes—and the training material is open source, so the CIT can make use of it or your staff can make use of it directly.

The third thing is improving the ACT government's online tender system. Like the federal government, the New Zealand government and most of the state governments, there is an online system, so I can go there and look at tenders. The problem is that the ACT system every week sends me a notice saying that there are new ACT government tenders that I can apply for. But it does not say what they are. With the federal government, the New Zealand government and most of the others, I register my company, I say I am interested in computer tenders, education tenders, and it only sends me a list of those. Then I can just click on a particular tender and it takes me to the website where I get the details.

With the ACT system, I then have to hunt around to see if there is anything relevant, and to get a particular tender document I have to tie in my ABN and all my details over and over again. It is so annoying that I have asked to be taken off the list to be sent the email message. It has taken several weeks to be taken off the list, and it was only after I said that I was going to come to this committee and talk about this thing that suddenly I had a phone call from the ACT government person saying, "Did you want to be taken off the list?" I said yes. So that could be improved. Either fix up the ACT government one or simply make use of the federal one or one of the state ones. It would be nice then if I could just get things about ACT IT tenders to look at. That is about it.

**THE CHAIR:** Thank you. With what you were saying at the end, the other really simple solution would be to just use our RSS feeds and categorise them by categories. Then they would not have to do anything almost. Other parts of the ACT government could manage to do that.

**Mr Worthington:** Yes, RSS feeds. I do not really mind the technical solution, but the main thing is to be able to register on the tender system, so that I do not have to keep typing in my details, and to select the categories of tender that I want. I do not want ones about fixing roads and replacing fences. I just want the computer ones and the educational ones.

**MR SMYTH:** So do the federal system and the New Zealand system operate on a password? Once you have logged on to the system once, are you allocated a password, or do you just put your name in? How does that work?

**Mr Worthington:** Yes. You create a user ID that is your email address and a password and you register all your company details, your address and business number and select the categories you want. After that, it just sends you the relevant tenders. If you want to go and look online, you put in your user ID and password and it remembers who you are.

**MR SMYTH:** Yes, whereas the ACT system tells you there are new tenders but then it is up to you to go through the whole process each time you want to look at an individual document?

**Mr Worthington:** Yes. With the New Zealand and Australian ones, and the New South Wales energy company ones, once you have looked at a tender, they record the fact that you have downloaded the tender documents, and when there are any updates or queries they then send you a message saying that there is an amendment or that someone has asked a question and here is the answer for everyone else. So that is quite convenient.

**THE CHAIR:** Yes. It sounds like a much better idea. Can we talk more about the integration of sustainability considerations in procurement. The GovDex is just a conference and messaging system? It only relates to sustainability from the point of view that it reduces travel—am I correct? Or is there some specific sustainability part of—

**Mr Worthington:** The GovDex is an online discussion system. I was suggesting that, for one thing, it is an example of how you can use computer systems to save having to travel around the place. But it is also a useful tool. The thing about it is it is government run and, so, while it is not designed for top secret information, it can be used for internal discussions. It is not like you are using Facebook or something like that. But it is an online discussion forum. It is actually built using some software developed by a company in Sydney, Confluence, which is also used, I think, by CSIRO and a few other places. But it is one of those discussion things. You register in the system, you go into a group, and they say, “Here is the latest draft of this policy we’re writing or this strategy. What input have you got?”

**MR SMYTH:** To your knowledge, what are the current sustainability standards for the procurement of IT?

**Mr Worthington:** In theory, I believe the federal government has adopted the US energy star system. It seems to be more honoured in the breach than the execution. Also, there are different levels of that system; version 4 of the energy star system seems to be the way people are going. There are also standards in regard to hazardous waste disposal. The department of environment issued a request for tender last year for computer equipment that specified EPEAT, which includes the energy star standard and standards about the use of hazardous materials in computers. It does not look like the federal government will adopt that because, if you go to the online of EPEAT computer products and you pick the highest level of environmental requirements, there are so few products that have passed that it is not worth it. So I suspect they will just go for the energy star rating.

**MR SMYTH:** So when you say it is honoured in the breach, is that what you were

just describing then—that they have picked the standard but nobody is meeting it because it is just too hard?

**Mr Worthington:** Yes. There was a policy document several years ago saying that they would use EPEAT. It is one of those that sort of say they will, but there is no enforcement mechanism there.

**MR SMYTH:** All right. You talk at the end of that paragraph of “to release green ICT guidelines by the end of 2009”.

**Mr Worthington:** We have not seen them so far.

**MR SMYTH:** But are they being worked on, or is that your suggestion?

**Mr Worthington:** No, they are being worked on. I attended a public presentation from somebody from the Australian Government Information Management Office who said there would be such guidelines. The last thing I heard was March—

**MR SMYTH:** March this year, next year?

**Mr Worthington:** March this year.

**MR SMYTH:** Okay. But you have seen no update?

**Mr Worthington:** I have not seen any official word on it.

**THE CHAIR:** One of the issues that I have always heard about in terms of local IT companies getting work from the federal government in particular, but the ACT government as well, is insurance, PI, in particular. Have you any views about that as a barrier?

**Mr Worthington:** I have public indemnity insurance. The level of insurance seems to vary from contract to contract, from government agency to government agency. I am a member of the Australian Computer Society and it was working on getting the New South Wales government to cap the liability at \$1 million. Currently I have to have \$10 million insurance. For me, more of a day-to-day nuisance is workers compensation insurance.

**THE CHAIR:** And the fact that it is a lot more expensive in the ACT than in New South Wales. Is that the issue, or is it something else?

**Mr Worthington:** It is not so much the expense; it is the government mandated procedures that are the problem. I have to have a statutory declaration to declare my annual income and have it countersigned by my auditor, my accountant. For a one-person micro business, that is a bit difficult. We have to get three people to sign a bit of paper. Under the New South Wales system, as I understand it, if you are below a certain level you just send your insurer the money. The paperwork is a problem. I have a letter from my insurer at the moment saying that I have not put the form in on time, because I am waiting for my accountant to do my accounts, and the insurer is saying, “We are obliged to inform the ACT government and they will then prosecute

you.”

**MR SMYTH:** Is that just a time frame matter?

**Mr Worthington:** It is the business of having to have a statutory declaration and having to specify your income to a particular level. If I could just say, “It’s under this amount.” In terms of the insurance, because it is a small business, you do not go over a certain level anyway. It is a sort of nominal amount. If I get the threat from the ACT government then I will probably just move to New South Wales. I have suggested previously to a committee that they could change the requirements and make it a bit easier, but it did not happen. If the professional indemnity insurance could be capped at a particular level, that would help.

**THE CHAIR:** Have you any knowledge of anyone who has ever been prosecuted under professional indemnity? We asked this question of ACT Procurement and they did not have any knowledge. My experience would be that no-one is ever prosecuted. The worst that happens if they do not like you is they just do not employ you again.

**Mr Worthington:** Sorry, you are saying—

**THE CHAIR:** You have all got PI insurance, which is professional indemnity. So, theoretically, if you do something which is not as wonderful as it could be, the ACT government could potentially prosecute you and you could call on that insurance to pay, whether it is \$1 million or \$10 million. But my experience would be that no government, either ACT or commonwealth, ever does this. The worst they do is they do not re-employ you. As I said, ACT Procurement were unable to make any comment on that. Would you, experience-wise, have any knowledge of anyone who has been prosecuted?

**Mr Worthington:** I guess the first point would be that, on my understanding, it is not prosecution. It would be a civil matter; they would sue.

**THE CHAIR:** “Prosecution” is the wrong word; sued.

**Mr Worthington:** I expect some of that might happen, given the court case involving the ACT bushfires at the moment. There may well be some professional indemnity insurance involved in that. I act as an expert witness in court cases involving IT where, typically, a government agency is not happy with what has been done by a supplier. I act as an expert witness either for the government party or the company. There are quite a few of those cases, none of which ever come to court. They are all settled out of court when I and my counterpart for the other side write our reports on what went wrong in the computer project. I think the parties involved decide they never want anybody to see what a mess has happened and they settle out of court, pay some money and all the documents are locked up somewhere so no-one can see them.

I am not aware of IT professionals’ professional indemnity insurance being used. That does not mean it has not happened. To me, it is just one of those things you have to do. Because I am a member of a professional body, it is pretty simple. I just fill in a form, say what I have been doing, roughly how much money I earn, what level my professional qualifications are and give them some money. That is about the end of it.

So for me it is not a big issue. As a logical thing, it does not make a lot of sense to me, because what good is it going to do the government?

**THE CHAIR:** I think what it has ended up doing to some extent is making micro businesses like yourself amalgamate into small businesses so that they can pay the same amount for insurance for 10 of them as you pay for one of you. That is actually what it has led to.

**Mr Worthington:** Essentially, I would pay the same amount of insurance if I had 10 people working with me as an individual. If it could be capped at \$1 million or something like that, that would be useful. As I understand it, the New South Wales proposal is that if you are a member of a professional body, they say, “The body has its own procedures for dealing with members who do inappropriate things, therefore, we’ll cap the insurance level because the risk will be lower.” Something like that would be good.

**MR SMYTH:** On the comment about upgrading the ACT government’s online tender system, what would the cost be of that, approximately, if you know?

**Mr Worthington:** I would have to send you the bill.

**MR SMYTH:** Fair enough.

**Mr Worthington:** I do not know, to tell you the truth. These tender systems are not simple. It would likely be quite an amount of money and fairly complex, although if you can make an arrangement to use the federal government one or one of the other state ones, that should make it a lot simpler.

**MR SMYTH:** Given that we operate in the territory where a lot of the federal government tendering is done, it would be more logical for, say, a small provider like you if the ACT used the federal system.

**Mr Worthington:** It would make a lot of sense to use the same system. The federal one works quite well. That is the other thing about it.

**MR SMYTH:** Are there any particular failings, while this committee is on the case, that we could suggest the federal government fix?

**Mr Worthington:** Failings—

**MR HARGREAVES:** That is not a bad fishing trip. Not bad. I am not arguing with you.

**MR SMYTH:** If the suggestion is that we might use it—

**MR HARGREAVES:** Put a worm out there, mate. You might get a trout.

**MR SMYTH:** Let us see what we are getting into. The federal system has been there for some years now, hasn’t it?

**Mr Worthington:** Yes, it has been around quite a while. I guess, because I have been using it for quite a while, I am used to it, so I will have forgotten what problems there are with the thing.

**MR SMYTH:** Good answer.

**Mr Worthington:** None spring to mind.

**MR SMYTH:** There are no immediate bugbears. If we got a licence off the feds and put it in place in the ACT, it would probably meet our requirements?

**Mr Worthington:** Yes. There is nothing I can recall that is wrong with the computer system. There are plenty of things wrong with the tendering process. I looked at a tender the other day for IT education consultants and I thought, “Great, well, I’ve got some experience in IT education,” but the tender was 126 pages long and had a 78-page form to fill in. It asked for a whole lot of material about the financial viability of my company, which was completely irrelevant since the company is me. It had about a paragraph on the actual topic of the tender and the remainder of the 100 pages was legalese. That side of it is a bit of a problem. Really, there was no way I could respond to the tender. The only way I could do it was to go to a large company and ask to be a subcontractor of their company.

**THE CHAIR:** Does a similar sort of thing happen with our tender process?

**Mr Worthington:** The ACT ones are not as bad as that.

**THE CHAIR:** It would be possible for a micro business like you to tender for an ACT one?

**Mr Worthington:** I think it would be easier to tender for an ACT one. I suppose my ideal is one day I will be able to have one where I get the tender document, I fill in a paragraph or two of material, hit a button and it is submitted. If you could have an electronic tender, that would be a big thing too—that you do not have to sign a piece of paper and put it in a tender box. If I happen not to be in Canberra and the tender is due it is a problem for a small business. In most cases you can submit the tenders electronically now, so that is a great feature.

**THE CHAIR:** Mr Hargreaves?

**MR HARGREAVES:** No, thank you.

**THE CHAIR:** Mr Worthington, thank you very much for your time. I am just conscious that it is 10 o’clock and we have a full schedule for this morning. Thank you very much for coming. It has been very interesting.

**Mr Worthington:** Thank you for inviting me.

**LIVINGSTON, MR DAVID**, UnionsACT

**THE CHAIR:** Mr Livingston, just to begin, have you read the privilege card?

**Mr Livingston:** No.

**THE CHAIR:** I can read it to you but I suspect you might prefer to read it yourself. I need to make sure that you have seen it, in case you are not happy with it.

**Mr Livingston:** That is fine.

**THE CHAIR:** Thank you, Mr Livingston, for attending this morning. We have your submission. Do you have an opening statement that you wish to make?

**Mr Livingston:** I do not, really. The reason is that this came across my desk in the last couple of days. Unfortunately, Kim Sattler is in Palestine at the moment and she has asked me to speak on her behalf. So I implore the committee to be patient with me. I am happy to answer any questions, based on the information that I have. If you seek further information from us, I can certainly arrange that.

**THE CHAIR:** Thank you. I have read this. There is one very minor thing. Do you want to ask a question first, Mr Smyth, because I cannot find the line that I read last night.

**MR SMYTH:** In the second-last paragraph on page 2, this comment appears:

However currently there are some large ACT Government contracts being executed by pre-qualified tenderers who continue to not pay their subcontractors even after the job has been completed.

Are you able to supply the committee with details of those instances?

**Mr Livingston:** I can get the details. I do not have them with me.

**MR SMYTH:** Can you give us a broad overview of what you know of the situation?

**Mr Livingston:** This will probably be covered off in some detail by the CFMEU as well in their submission. My understanding is that most of the larger contracts that do not necessarily pay their subcontractors on time are mainly in the construction industry. The concern there is that, particularly given that they are pre-qualified contractors, if there is not a process for the union to go to the government before the contract or even during the contract and say, "Look, we're concerned about the way this organisation is delivering this contract," or "They're not going to be paying these subcontractors on time," we end up with contractors getting repeat business from the government. They are getting repeat money from the ACT government to deliver services but they are not necessarily delivering on the requirements industrially that they have to deliver on, and also with their subcontractors. I can get more detailed information about the contractors that we know of. But, like I said, the CFMEU will probably also expand on that.

**MR HARGREAVES:** David, do you recall the security of payments legislation which recently went through the Assembly?

**Mr Livingston:** I only know of it, unfortunately; I have been out of town for 12 months.

**MR HARGREAVES:** I suggest that you have a look at it and see how it fits in with this. Madam Chair, you might like to get the secretary to get hold of that particular piece of legislation and have a bit of a look at it. This will come out in the CFMEU submission; it has been a serious dereliction on the part of some major contractors. The question really is whether or not it should be in the tender process and in the contract or whether it should be mandated by legislation, both of which have penalties, but the legislative approach has a much more significant penalty applied to it. David, you might want to have a chat with Kim when she comes back and have a look at the legislation—perhaps even drop us a line and say how you felt about it.

**Mr Livingston:** The security of payments legislation is a step in the right direction. The concern with legislation, of course, is that it does not necessarily prevent the breaches; it deals with them after the fact. Even though it is good to have the legislation in place, I think a lot of the issues with paying contractors on time, paying workers properly, dealing with proper industrial arrangements and things like that, need to be dealt with in the applications for tender, and taken into account when those tenders are being received or accepted in most cases as well. I will speak to Kim about it and we would love to get back to you with more information about it.

**MR SMYTH:** Going back to the original quote, it goes on a little bit and says there is an ongoing problem with monitoring complaints and the pre-qualification process. Can you outline for the committee what you understand the complaints process to be?

**Mr Livingston:** I do not have any direct relationship with the complaints process. My understanding of the issue here is that a lot of our affiliates have problems with making a complaint to Procurement Solutions and with it kind of going into the ether. We see a lot of contractors getting repeat business after we have made complaints about them and it appears that not much has happened. Again, I do not have any direct relationship with the complaints process, so I do not actually know about it in any great detail.

**THE CHAIR:** You may not be able to answer this, but presumably the complaints involve more than just wage issues. Are there OH&S issues as well?

**Mr Livingston:** Yes.

**THE CHAIR:** The legislation which Mr Hargreaves was referring to, I believe, is only financial legislation.

**Mr Livingston:** Yes. The complaints go to a broad range of industrial issues, not just wages, and not necessarily just conditions. There are examples of contractors—I do not have them off the top of my head—who were using Australian workplace agreements after they were outlawed under the Fair Work Act, contractors who have not fulfilled their occupational health and safety obligations and things like that. I

think that, when it comes to the use of public money, there should be a capacity for any stakeholder to go to Procurement Solutions or to go to the government and say, “We’re concerned about this contractor because they’re not fulfilling the health and safety obligations, they’re not paying their workers properly; they’re not paying to a recognised industrial instrument,” and actually have those complaints responded to and dealt with and, in the more serious circumstances, have those contractors not be given contracts again, until they are prepared to comply with legislation.

**MR SMYTH:** So you will supply examples?

**Mr Livingston:** I can supply examples, yes.

**MR SMYTH:** Page 3 talks about an agreement that UnionsACT and its affiliates have entered into with the ACT government. Is it possible for the committee to have a copy of that agreement?

**Mr Livingston:** I can get a copy of the agreement.

**MR HARGREAVES:** I might just put in a note of caution about that. If there is an agreement between two parties, the approval of both parties must be obtained before that sort of information is provided. So if it is an agreement between the Greens and the Labor Party to have political stability in this town then both people must approve that provision to a third party. So I would suggest that whilst Mr Livingston can make an undertaking on behalf of UnionsACT, the agreement of the other party would need to be sought and obtained before we could see it.

**Mr Livingston:** I will need to get authorisation from the executive of UnionsACT as well. But I can certainly start that process and get back to you.

**THE CHAIR:** Thank you, Mr Livingston. I imagine that the ACT government would be pleased to make such—

**MR HARGREAVES:** We are not members of the Greens party, Madam Chair, so it is dangerous to assume what the government may do when we are not part of it. Madam Chair, can I ask a question which I think would be dear to your heart. It goes to the ethical suppliers declaration. UnionsACT is saying that there ought to be an ethical suppliers declaration. Do you have a copy of such a declaration? I have not actually seen one. That would be helpful for me.

**Mr Livingston:** I do not have a copy—

**MR HARGREAVES:** Not now.

**Mr Livingston:** of the ethical suppliers declaration but I can get you one.

**MR HARGREAVES:** Thanks very much. You also suggest, in point 13 on page 4, that contractors complete an ethical suppliers declaration every 12 months and that the union may request a copy. What makes you want to see them do it every 12 months rather than at the beginning of a contract, for example, and then at the beginning of the next contract?

**Mr Livingston:** It is about maintaining the status quo and maintaining proper industrial arrangements. Most of our concerns regarding ethical suppliers are about making sure that, in what has been, over the past five years or so, a constantly changing industrial environment, all contractors are up to standard and are staying within their legislative requirements, not just industrially but in health and safety as well. Also, the nature of any workforce is that it changes. People come and people go.

We would like to see a system where each contractor is providing an ethical suppliers declaration every year which indicates that they are paying appropriate superannuation, appropriate workers compensation, that they are paying to an industrial instrument that is recognised by the act and that they are fulfilling their OH&S obligations for every staff member. I think doing it every 12 months is the way to do that. It means that the process is more transparent and the ACT government can be kept up to scratch with what is happening within the industry and what is happening with the money that is being spent.

**MR HARGREAVES:** Are you suggesting that perhaps people's commitments to doing these things when a contract is about to be awarded is very high and it is actually taking a slide in the course of time? Am I reading too much into the suggestion that this sort of thing would assist in the enforcement and the monitoring of that commitment?

**Mr Livingston:** It would assist in the enforcement and monitoring of the commitment. What tends to happen is that at the start of a contract a contractor will sign an ethical suppliers declaration and that is as far as they go. It is a matter of saying, "We've signed it, we'll fulfil our obligations under our contract, so we'll just leave it at that." If it is a three-year contract, for example, and they are required to sign an ethical suppliers declaration every year, it provides more likelihood that they are going to keep it at the front of their mind when it comes to actually employing new staff and being able to justify to the ACT government that the money is being spent appropriately, as opposed to just signing it at the start of their contract, living out the contract and hoping it goes okay.

**THE CHAIR:** You may not be able to answer this: do you have any idea of what sort of proportion of contracts have these sorts of issues?

**Mr Livingston:** I have no idea.

**THE CHAIR:** In UnionsACT's relationship with the ACT government, would you have more than a dozen cases over a year? I would like some sort of vague idea as to whether this is once in a blue moon or every second contract.

**Mr Livingston:** It is quite a common problem across many industries. UnionsACT represents 24 affiliated unions, and most of the compliance things, most of the following up with procurement issues and ethical suppliers, come directly from each individual union, which is why I do not have the information available to me straightaway. But it is quite a common thing that we find in lots of different industries that contractors are not necessarily behaving ethically. When they have signed an ethical suppliers declaration, that has not necessarily meant that they behave ethically,

either. The community sector is a good example of that as well. To shed a bit of light on it, it is not just the blue-collar construction industry, landscaping or things like that; the community sector is the same. Often there are a lot of repeat contracts happening, with no real scrutiny of what the industrial arrangements in those workplaces are. So it is quite common. I will have to speak to the individual unions involved, but I can more than likely get examples for you.

**THE CHAIR:** Examples or just an idea of the quantum. Is it a big problem or is it a small problem which has a big impact on a very small number of people who unfortunately get involved in it? Another area I am interested in—

**MR HARGREAVES:** Madam Chair, if I can just follow up that line of thinking that you were just exploring then—I would be interested in UnionsACT's take on this—in this instance is it predominantly within the construction industry or is it also applicable in, say, the IT industry and the soft industries where we have major companies, accounting firms et cetera having subbies to do that? Is the issue of concern to UnionsACT more predominant in the construction industry or across the board?

**Mr Livingston:** The issue of concern to UnionsACT is across the board. The construction industry stuff I will leave to the CFMEU to discuss in greater detail because it is their industry. But the issue with fulfilling ethical suppliers requirements is across the board.

**MR HARGREAVES:** That is interesting. I see a nod there from Mr Worthington. Thank you for the confirmation.

**THE CHAIR:** You would not have much representation probably from the IT and accounting industries in UnionsACT, I would imagine.

**Mr Livingston:** There is some. Compared to an industry like the construction industry, it is a reasonably low unionised industry. Those issues are still there and the unions are still quite vocal about them, but my understanding is that we do not see a lot of them happening in the ACT, on the basis that there is not a lot of union membership in those industries here.

**THE CHAIR:** I was going to ask about your saying that you are agreeing with social tendering suggestions. Have you any ideas of better ways that Procurement ACT or the ACT government in general can actually do this? We all agree with the idea, but how do you think it could happen in practice?

**Mr Livingston:** I think that there is a process to be followed with setting it up—and ACTCOSS will know better than I do about how to do that—but it comes down to the way particularly Procurement Solutions communicates with the community sector in general, because the community sector are responsible for meeting the needs of their consumers.

More often than not these days, Procurement Solutions is ensuring a lot of the tender processes happen for the community sector, and I think what needs to take place is a fairly open and frank dialogue between the sector and Procurement Solutions and the

Australian Services Union as well about how you can deliver certain services through social tendering rather than delivering services on the cheapest basis when they are services that can be done by community sector service users and delivered by the community sector. The community sector should certainly be dealing with information about that. There should be an open dialogue about how to set that up. How to deliver it? I do not know, just to answer your question.

**THE CHAIR:** I guess the same goes with the environmental ones, if you have got any suggestions as to how best to go about those worthy aims—

**Mr Livingston:** Our submission relating to environmental sustainability, whilst it is not specific in any great detail, because I think that in order to set up that process, again, it is going to take an open dialogue—not sort of us giving you detail about how it should happen and just expecting it to be applied—is important, though. Environmental sustainability concerns that the general community has here should be taken into account in giving money to tenderers. The broad point of most of those issues is that we have got to move away from what I consider to be the easy model—the lowest cost tenderer gets the job—and actually start taking into account things like: how is that tenderer going to deliver with regard to environmental sustainability? What sort of player is that tenderer in a social sense and an in an industrial relations sense as well? That is where that comes from. More detail on how to set that up, again, needs to be subject to open dialogue between everybody.

**MR SMYTH:** In the last paragraph on page 7 you make the statement that small contracts should not be unduly burdened by attaching too much red tape to the process. How do you reconcile that with the 14 points in recommendation 1 that should be in contracts?

**Mr Livingston:** When we are referring to small contracts, we are referring to contracts that generally do not involve wages and employment of people. When we are talking about having strict guidelines about ethical suppliers and industrial relations and things like that, it is actually about contracts that will require the contractor to either subcontract it out or employ people to deliver the work. Small contracts happen all the time and more often than not they do not involve an employment framework. We think it should be easier for small businesses and other players to actually get those contracts with less red tape, simply because they are not necessarily delivering services in the same way that you should be required to deliver a service on a much larger contract.

**MR SMYTH:** But shouldn't we be aiming to have all contracts with less red tape, particularly inappropriate red tape?

**Mr Livingston:** Absolutely, but I do not think that ensuring that large contractors abide by industrial legislation is unnecessary red tape. So, whilst it may be unnecessary for small contracts where the contractors do not employ people, for larger contracts the red tape there is absolutely necessary. There should be strict guidelines about occupational health and safety, industrial relations and ensuring workers have access to freedoms like every other worker has.

**MR SMYTH:** All right. Occupational health and safety plans that are required: do

you believe Procurement Solutions are taking into account when they award tenders the occupational health and safety record of firms and the plans that they submit?

**Mr Livingston:** In some cases, yes; in most cases, more than likely, yes. In some industries, occupational health and safety standards are simply a lot lower than in other industries, and I use the example of the community sector again. Often when awarding community sector tenders, the tender applications do not have answers or plans around occupational health and safety and they are often not asked for them. Occupational health and safety is a pretty serious issue in the community sector, as it is in a lot of other industries. But, by virtue of the fact that the sector does not have a lot of money, does not have a lot of expertise when it comes to industrial relations and occupational health and safety, the issue tends to be overlooked when awarding contracts. When it comes to the construction industry, again I will leave that to the CFMEU, because they know it better than I do.

**MR SMYTH:** As a general question, should greater emphasis be put on the OH&S plan that is required by many tenders? We heard from Procurement Solutions that it is as simple as “Have they got a plan? Tick.” “Have you got a plan?” “Yes, it is covered.” The content of the plan is not necessarily assisted by the weighting in the contract. With the weighting on OH&S issues and, indeed, environmental issues, which is the same case, often we were told that there is just simply, “Yes, they have got an environmental management plan; therefore, it is a tick,” but obviously the plans vary from organisation to organisation. Should they have greater weighting and should Procurement get rid of the binary system?

**Mr Livingston:** They absolutely should have greater weighting, particularly occupational health and safety. Safety has always been a major concern of the union movement, particularly when it comes to hard industries like the construction industry. Simply ticking a box and not having anybody look at your occupational health and safety plans, or not having anybody monitor how they work in practice, is extremely dangerous to workers. When workers get injured on site, on sites where contractors have got money out of the ACT government, I think somebody needs to be able to answer the question why, or if this tenderer fulfilled their obligations with regard to occupational health and safety in order to get that contract?

**MR SMYTH:** Should Procurement Solutions have a role in ensuring that those obligations are met or should that be left to WorkCover and the ORS?

**Mr Livingston:** I think WorkCover and the ORS play a big role in it. If Procurement Solutions are signing off on a tender and accepting the applications, there should be a role there with regard to actually looking into claims being made by the contractors—and not just for occupational health and safety but industrial relations as well. If contractors are going to tick a box to say that they are fulfilling their requirements, I think there is a role that Procurement Solutions have to play in ensuring that that is true and that in practice those requirements are being fulfilled; that it is not just that you have a health and safety plan on your work site and it is never adhered to. For the purposes of something as important as occupational health and safety, simply ticking a box and having that be the only real barrier, with regards to occupational health and safety, to getting money out of the government is pretty terrible.

**MR SMYTH:** In recommendation 1.12 you make the statement:

The Union is notified of every company bidding for work at the time tenders close and has 10 days in which to comment on their industrial relations history including whether or not they are bound by a collective agreement.

Is that a desired outcome or is that something that is in place at the moment?

**Mr Livingston:** It is a desired outcome. There is some communication between Procurement and the unions involved with regards to who is taking on tenders or who is applying for tenders. Often unions are not asked about information about contractors. Given that we spend all of our working lives in these industries, what each specific union for that industry can provide is a different perspective that you are not going to get out of a tender application from a contractor. We know these contractors and we know these industries. So I think it is really important, particularly for the purposes of transparency for the government and for preventing any contracts that do not abide by industrial obligations or do not abide by occupational health and safety, for there to be quite an open dialogue between Procurement and the union movement in Canberra with regard to what our history is with the industrial relations history of most of these companies.

**THE CHAIR:** Do you have the resources to do that?

**Mr Livingston:** Most of the unions do, absolutely. I do not think that it is necessarily a role for UnionsACT to play, because we are a peak body. We actually do not have the in-depth knowledge of the industries that these unions have. But most of the unions have the resources and the willingness to be involved in a lot of these tender processes. I assume that for much smaller tenders where there is nobody going to be employed that is a different story; but for large tenders where people are going to be employed and potentially our members are going to be on those work sites I think there is absolutely a role for the unions to play, and they definitely have the capacity to do it.

**MR SMYTH:** But surely that recommendation is an undermining of the tender system which is meant to be free and impartial? What you are seeking there is to influence outcomes, and if we open it up to the union movement offering advice, should we not go to the professional bodies, the Business Council or the MBA or somebody, to say, "We know these building firms well," and then doesn't this just mire the whole tender process in a "he said, she said" row, which we currently avoid?

**Mr Livingston:** We are not suggesting that you should not go to other players in the industry to do your checks and balances on these tender processes. What we are saying is that if all you are doing is taking an application for a tender on face value and that contractor is selling you their contracts so that you will give them money, you have not necessarily done the most appropriate checks and balances to make sure that everything they are saying in their contract is correct and that it is going to work in practice. I do not think that it is necessarily going to descend into chaos with Procurement being mired in these disputes between the union and the employer bodies; I do not think that is the case at all.

It is just a case of being able to not only just receive the application and read it and go, “Okay, that sounds okay,” but to receive the application and read it and then follow it up—find out if it has been seen correctly. It is the same as when somebody applies for a job; you follow up their references. Like I said before, I think the union movement has a role to play in that because we know this industry. I think the employer organisations have a role to play in that because they know these industries. But I do not think that tenders should be going to contractors just on what they have written in their contract without any further follow-up or any checking of whether or not what they are saying is correct.

**MR SMYTH:** So are you saying at this stage that Procurement does not do adequate checks on tenders when they are received?

**Mr Livingston:** I think Procurement does quite a good job—and these are not issues that happen with every single contract—but I think that a better job could be done. Given that it is the expenditure of public money, I think that it is a responsibility of Procurement Solutions to actually engage all of those stakeholders.

**THE CHAIR:** As we have no further questions, thank you very much, Mr Livingston. I note that it is a minute or two past 10.30, and I guess we are going to talk about the CFMEU’s issues in more detail.

**Mr Livingston:** Excellent.

**THE CHAIR:** Thank you very much.

**Short adjournment.**

**HALL, MR DEAN**, Secretary, ACT Branch, CFMEU

**TEGG, MR WARREN**, Industrial Officer, ACT Branch, CFMEU

**THE CHAIR:** Welcome, Mr Hall, and Mr Tegg. Gentlemen, have you seen the privilege statement, and are you happy with the provisions in it?

**Mr Hall:** Yes.

**THE CHAIR:** Great. Thank you very much. Would either of you like to make an opening statement?

**Mr Hall:** Thank you for bringing us along. I guess we have been one of the driving forces around what has been happening with procurement. We have some major issues in our union, particularly to do with the areas of occupational health and safety, industrial relations and training of participants in the construction industry.

Our industry by its nature is one that is very transient and operates on contracts, which are short term, really, predominantly under the control of principal builders. ACT Procurement predominantly deals with those in a contract management situation. You are probably aware of how they do it. It is not a fixed price contract, generally. They come in in project management for them.

We have come across some glaring errors in the system. In particular, the system mentions things like IR and OH&S, but there are no proper checks and balances in the system to ensure they are actually happening. From the government's perspective and that of ACT taxpayers, in construction we believe it is costing the people of Canberra significant amounts of money in wastage and lost opportunities. It has got to a stage where, in reality, the CFMEU has a relationship with all construction companies and subcontractors in the ACT.

That relationship varies from time to time. In reality, we are an industrial advocate for employees. We play the role that we protect them for health and safety and wages and conditions. From time to time we are in conflict with participants in the industry because we are trying to get the outcome we want or deserve for our members. But in saying that, the vast majority of times we work very closely with the builders and subcontractors to achieve the outcomes that are best for the community, which is infrastructure that will make it better for the ACT community and that will create a hell of a lot of employment and drive the economy.

As we know, and as people here would know, we are an indicator. They look at our industry—whether the economy is going well based off our industry. Without being big headed about things, the construction industry is an important player. To give you an idea, we make up about five per cent of the population in industry in Canberra and we have one-third of the OH&S issues which are reported by WorkCover. More people die in construction in Australia than in any other industry. More people are seriously injured in the construction industry than in any other industry.

We have a real opportunity here to sort things out, and it is not that hard. It is very simple. I could bring in to you at least 15 to 20—probably more—subcontractors who would sit behind this microphone and tell you that they want to be regulated more

because they are the ones who are doing it right and they are losing contracts to people who are doing it wrong.

What we mean by “right” is not union EBAs. Many of those contractors have got union EBAs; many of them have not got union EBAs. What we are talking about when we say “doing it right” is that they are following workers compensation and they are insuring their people, not only having the certificate of currency but insuring them for the correct amount. They are paying income tax for their people as well as payroll tax. They are paying long service leave for their workers and they are paying superannuation for their workers. They are meeting their obligations. They are the same contractors who are missing out on ACT government work.

We have been on ACT government sites, and I will name them for you. I will name the contractors who you are employing. It is an absolute disgrace that the same contractors keep on getting the same work. I will tell you what responses those contractors get when they are tabled with clear evidence of breaches of commonwealth and ACT legislation. The response is, “I’ve got a stat dec. That’s all I need. They’ve signed a stat dec for me.”

Manteena Pty Ltd is a classic example of this. We have been on a number of their projects. A number of the subcontractors on their projects have collapsed over the last two to three years, owing in excess of hundreds of thousands of dollars in entitlements to workers. This has been going on for a long time. It is not just in the last few years; it is an ongoing problem.

One particular project that comes to mind is the super school at Kippax and the plastering contractor on there, Tilton. At the time there were in excess of 80 plasterers on that project. He is an interstate contractor, which I will come back to, and that is another problem. I was greeted one morning in my office by 30 Chinese plasterers. They were sitting in my foyer cross legged and they had not eaten for three days. They were all so-called independent contractors on an ACT government job—Chinese plasterers. Many of them were on visas, which we will not go into too much because a few got deported. Many of them were on visas that were not correct. They were here on student visas or visitor visas and were working in our construction industry on an ACT government worksite.

Those workers were so-called independent contractors. They were getting paid—and we got the figures—\$26 an hour flat. In addition to that, they were paying an hourly rate fee to a body hire company out at Cabramatta who recruited them. I will not go too much into the body hirer at Cabramatta, but it is known; it is documented. You could look at the triads, their influence on what they do with migrant labour in the construction industry and the extortion of money from people who get jobs.

None of these people were union members. Very few of them could speak English, but they had one guy who could speak English. In the end, what we found was there were claims of \$333,000 outstanding to these individuals. We managed to get all of it, bar \$2,000, off the contractor. But we had to engage in talks with the contractors and Procurement, which were lengthy and unnecessary if proper checks and balances had been put in place.

There is no way these people were contractors. Many of them were unskilled labourers who were turning up on the building site. They were told when to come. They wore a Tilton uniform and were told when to have a smoko. They were told what to do and they were not responsible for rectification of work—the things that would be associated with a normal subbie. We have subbies: I have got blokes who own their business who are legitimate subcontractors, 30-year members of our union. These people were not subcontractors and it is rampant.

We approached the builder and got the back pay, which was the luckiest thing, which these Chinese people, most of them visa holders, were quite happy to receive. They were quite happy to get their money and go away because they were hungry. We fed them for two days. We said, “Where is the super?” There were no super records. We said, “Where is the long service, which is an ACT act?” The company was not even registered for long service. They had no registration of superannuation. We said, “Where is your workers comp?” They had workers comp for 10 people.

We went to the builder and said, “Here’s the clear evidence of this.” The response from the builder was, “I’ve got a statutory declaration from the contractor.” I said, “Can you go and have a look to see if they are registered with the ACT long service board?” The response was: “That’s not a requirement. I don’t have a requirement to do that.” In the meantime, you have got reputable subcontractors employing local labour, training apprentices, living in the community, paying taxes, paying payroll tax, paying workers comp into our scheme so that it floats and paying into our long service leave so that it floats who cannot get the contracts. Trust me, we have our blues with them too. But, in the end, it is farcical. It is getting to a stage where the scheme and the way it is set up are forcing down industrial relations. You want to talk about union EBAs, but basic requirements around statutory requirements are being forced down, as well as basic occupational health and safety.

The ACT government projects are actually the ones that are driving down the standard in the construction industry. You might think it is just the small builders around here. There are a couple of them, Iqon and Manteena, that are not great, but then you look at someone like Leighton’s, which worked on Julia Gillard’s building, that dropped the formwork. Luckily, no-one got killed there. It was very lucky. Everyone would remember when the formwork collapsed down there.

We went down there and it was rampant. Okay, it was not your responsibility that similar problems were happening, but to give you an understanding: we went in there—we ran a pretty big campaign in the media—and we got stuck into them. A major intervention took place there and we were guaranteed that people would be paid correctly according to an industrial instrument. They would have workers comp, they would have super paid and they would have long service leave. We put an audit tool in our submission and we are supportive of that audit tool—we believe it will pick it up—but the New South Wales MBA were running that and it has been proven that we cannot have that. It would be like us running an audit.

No-one would accept us running an audit and I do not think the employers can run an audit for employers, because, in the end, they get paid. They are a union. They are the bosses’ union and they pay their association fees. How are you going to audit someone who can drop their association fees? In the end, what happened was you

needed an independent audit. We found three default insurance cases. I sit on the default insurance board and three off that job will be picked up by the ACT taxpayers—three serious compo claims because three contractors on that job did not have ACT workers comp. I will let you go.

**MR SMYTH:** We are going to run out of time.

**Mr Hall:** I could probably go on.

**MR SMYTH:** I was just going to ask the question: it is not an inquiry into the building industry; it is an inquiry into procurement.

**Mr Hall:** Yes.

**MR SMYTH:** What is Procurement's responsibility in this?

**Mr Hall:** Procurement is the one, because they are not regulating it. What they are doing is—

**MR SMYTH:** Is that their job?

**Mr Hall:** Procurement, yes, because it is easy.

**THE CHAIR:** How could they do it?

**Mr Hall:** They can get the evidence. It is part of the contracts. Procurement says, "You will comply with industrial relations and you will comply with the laws of the territory and commonwealth." They are super, long service, workers comp, payroll tax and taxation. They are getting a stat dec. As to the stat dec in the construction industry, there is a famous saying—and it may as well go into *Hansard*—can we please print them on toilet paper because then they would be of use? When was the last time someone got prosecuted for fraudulently putting a stat dec in? Never.

We had people writing stat decs. Akron, for example, were writing stat decs saying that they had received confirmation from subcontractors that they had been paying them. Those contractors were not signing the stat decs. The administrator admits there are problems there. We need clear evidence. How do they fix it? There are myriad problems. This could go on forever.

How do you fix it? Get the evidence. Talk to any of the subcontractors doing the right thing; they have got no problem. They get their certificates of currency for workers comp sent to them by email. They just forward it on with the required amount. They get their long service leave receipts for payments, the actual receipts, detailing each of their workers, so you can cross-match them for the people that the builders inducted on site—"Dean, Brendan Smyth": we're all there; yes, all the payments are going in. They get the same from their superannuation suppliers. Anyone who is running a business properly—I have talked to many of them—have not got a problem. They will supply the information.

**MR SMYTH:** So what you are suggesting is that, as these documents become

available, they should immediately forward them to—

**Mr Hall:** Pre and during the project.

**MR SMYTH:** Procurement, so Procurement has a monitoring role in ensuring—

**Mr Hall:** I reckon Procurement should get the builder who has got the original contract to do that work. Procurement should audit it and do sample audits so they are not drawing out. I am realistic about the amount of money, expertise and time that Procurement have got. They employ builders to manage these projects and they pay them a lot of money. The builders should compile the information and then there should be spot audits by the government on compliance. The amount of bureaucracy and red tape we would create if the government got involved would be ridiculous, but the builders have the capacity and opportunity to do that. They can do it. Then you have the government just spot auditing, coming onto a project and going, “I’m going to pull two subcontractors out of your file and look at them.”

**MR SMYTH:** So who should run the spot audit? You talked about an independent audit body. Do you see Procurement doing that?

**Mr Hall:** At the moment you have got the resources here. ACT WorkCover has got a workers comp unit. I believe it should be resourced more. I believe there is an inquiry and, hopefully, that will be one of the findings. Workers comp is a significant issue in the ACT and our scheme is under a lot of pressure all the time. If we had proper compliance, it would relieve the pressure. A few of these spot audits by workers comp inspectors would be helpful. The long service leave board has compliance people. We need a better coordinated approach. We have the people there. Already there are agencies and organisations. They are underresourced and the particular acts they operate under do not give them greater power to walk in and get documents.

I think it has been changed recently, but workers comp inspectors were not allowed to ask for basic information about certificates of currency. They were not allowed to go and ask how much money, they were not allowed to deal with the insurer and they were not allowed to ask how much they were insuring people for—things like that. I think a lot of that has been changed. You have got long service leave and workers comp inspectors. You have got a lot of people out there that can do that job already. There are people inside the tender process. I do not think it would be too cumbersome. Again, anyone doing the right thing would not have a problem.

**THE CHAIR:** So would it work if it was someone employed by ACT Procurement?

**Mr Hall:** I think it needs to be supervised by them, definitely, and they need to coordinate it. It is uncoordinated and there needs to be a little bit more muscle, a bit more bite put into certain parts of legislation and enforcement. There needs to be a penalty if you stuff up.

**THE CHAIR:** A penalty more than just you do not get another contract?

**Mr Hall:** That would help. In our industry, that would do enough. If you found one of these building companies, one of these principal companies, was not doing the right

thing and you said, “Well, you’re struck off for two years; you’re not allowed to tender for any ACT government work for two years,” I can tell you that after the first one you did it to everyone would pull their heads in. It would be all over, red rover. Everyone would be complying. The builders would comply—trust me. The builders comply with the Australian Building and Construction Commission because otherwise they get penalised. The builders do not comply with the Federal Safety Commissioner because there are no teeth in the office of the Federal Safety Commissioner.

**MR SMYTH:** We are going to run out of time. In the tendering process which Procurement runs, particularly for construction projects, the tenderers are asked to put in OH&S safety plans and environmental management plans. We have heard from Procurement ACT that sometimes it is just a tick—

**Mr Hall:** It is.

**MR SMYTH:** Yes, you have got one, therefore, you comply.

**Mr Hall:** Yes.

**MR SMYTH:** Are you happy with that—

**Mr Hall:** No.

**MR SMYTH:** or should that change so that there is an actual weighting given?

**Mr Hall:** There has got to be a weighting. That is what Warren is just pushing over to me. That is the point he is making. You must be in telepathy with each other. He has actually pushed it across to me. There has to be a clear weighting on it. We have got a situation where anyone with any decent occupational health and safety is in a two-fold situation. We have got builders who win occupational health and safety awards from the government—

**MR SMYTH:** But cannot get jobs.

**Mr Hall:** They win them because they have got great paperwork. You have got the ones who actually have great paperwork and great systems on the jobs, but they are too dear, because they actually do it. Then you have the situation where some people spend a lot of money developing really nice systems which they can submit on things like this. But when you get on the job, I have got files in my office of safety breaches, and the regulator would have them, too, because I have sent them to him. You have got a situation where the perception of what is happening and the reality on the job is not conditional.

I will give you one example. Contractors will go out, and a proper builder, one who is weighting it properly, will say, for example, “There needs to be a certain type of fence around a construction site.” And it is clear. The ACT government regulations around demolition clearly state that that fence needs to be up there. A proper builder will go along and say, “I’m going to have to put up a hoarding, it’s going to have to have a gantry, it’s going to have weight, it’s going to have to be bolted in.” All of this stuff

costs a lot of money. How much is a person's life worth if a piece of the building falls on them? It costs a lot of money but it prevents, or limits greatly, the chance of death.

Another builder will say, "Put the chain wire fence up, and take the punt," because no-one comes out and checks, unless we come out, or Workcover, but no-one from Procurement checks on the job that they are actually saying what they are writing down in their occupational health and safety policies.

**MR SMYTH:** But in the case of a demolition, that would be specified in the contract: "I will put up—

**Mr Hall:** Yes.

**MR SMYTH:** There are standards.

**Mr Hall:** Yes, there are regulations, but they do not do it. I used to work for a few building companies and I used to do safety in the end. I would be dealing with the foremen and project managers, and a common phrase is "we'll roll the dice".

**MR SMYTH:** So whose job is it, if you specify certain fencing or a hoarding, to go out and ensure that that has been put up and complied with?

**Mr Hall:** At the moment it is Workcover, but the reality is that Workcover catch and kill. When someone makes a complaint, that is generally how it is driven, because they do not have the resources to be proactive, so they react. They either react to complaints from members of the public, construction workers, in our case, or the union. Predominantly, when you see the statistics, a hell of a lot come from us because we go out and we are active. We put people in the field and we are proactive. We have to get to the situation where, if Procurement is the client, the government's agency is the client, a good client has a responsibility to ensure that safety and OH&S are maintained on their projects.

I will talk quickly about training. You should look at the federal government's latest stuff on training. If we do not invest in the ACT, we run out 150 apprentices. Currently, we have—I am the chair of that board, CITEA—30 sitting in a barn who we are paying because we cannot put them out. But you can go down the road, and someone will be in a sham contract relationship without a qualification as a carpenter, getting \$20 an hour. The MBA has got the same problem. The HIA has got the same problem. The government needs to weigh in on our projects and insist on a level of training, apprenticeships and training, on a project. That is not just us trying to get our kids out of a barn so that we are not bankrupting our system, but it is an important point. But there is a long-term cost to the lack of emphasis on training in the construction industry.

If we do not have people being trained, the prices are going to go through the roof. We have got to play a role, because it will end up being a problem for our community. The federal government has weighed in; there are guidelines there. I think procurement should be a part of it. There are clear procurement guidelines for it now in the federal system, and we are seeing a distinct turnaround. Straightaway, with the Cotter Dam, the ASIO job, we are seeing massive amounts of apprentices being taken

on to those jobs. It will change our industry.

**MR SMYTH:** Preference for local contractors?

**Mr Hall:** Local contractors is a simple one. That is costing us a hell of a lot of money, too. I flew down to Melbourne, because a lot of businesses have been busted by the collapse of Akron on Bonner and Crace. It is a real-life example. The administrator stood up and said that one of the major reasons Akron, which was the biggest—I do not know if it still is—civil construction company in Victoria has collapsed was down to problems it had on projects outside Victoria. The only project it had outside Victoria was here.

**THE CHAIR:** What was the problem?

**Mr Hall:** The problem is—this is a true, real-life example—we have got great regulations around our roads, our infrastructure. Canberra has picked that up through history, from when the federal government used to run us. But we have got gold-plated standards, which is great for our community. When you gave it to interstate contractors, they came to town and they ran into huge problems because they brought their subbies in and they started building to Victorian standards, and they had to go and rip out large parts of the infrastructure that they had put in. So that was the major contributing factor to their collapsing here.

We have to understand that when you have local people here, they employ local people. They put money back into the local community. But, more importantly, they train local people; they build our infrastructure for us. You have to weight it towards local people, because if we do not, it is stupid; it is a false economy. We are bringing infrastructure, training and people from interstate. None of these people employ anyone here. Akron brought everyone from Victoria and they used body hire labour for two years. Not one person was directly employed by that company. They body hired people, turned them around at the gate with no notice and sent them home. When it rained or they did not have work, they used the cheapest way—they did not train them. It is a travesty.

The union movement is upset about that because we believe people should be employed and trained. But it is a travesty for the community. We have to be able to weight these procurement situations to favour local content. I am not stupid; I am not saying they can price us out of it to a ridiculous extent, but there is a long-term cost to making short-term savings. We are not training people, we are not developing local companies and we are not keeping the expertise in Canberra.

**MR SMYTH:** So you are suggesting a weighting in the tendering process?

**Mr Hall:** Yes, weighting for OH&S, weighting for industrial relations. It would be naive of me to say it would be nice if there were EBAs with the union, but there should be just the basic commonwealth and local legislation that they are compliant with, with a weighting on training and a weighting on local content. We have to have those things.

**MR SMYTH:** Procurement ACT did not run the tenders for Crace with Akron. That

was run through LDA?

**Mr Hall:** Bonner was run through LDA. But Procurement were involved. They will be able to answer that better. I am not blaming them. The issue is that, in our industry, you have got people probably on one side getting 60 grand a year, and another person on the other side getting 250 grand a year, and there is disproportionate experience, knowledge and expertise. Often, assistance is being provided on both sides. You want to have a look at that.

**MR SMYTH:** But if you want to fix the Akron dilemma, where was the problem? Was the problem in the contract? Was the problem in the weightings?

**Mr Hall:** They were the cheapest.

**MR SMYTH:** Was the problem in the process?

**Mr Hall:** They were the cheapest.

**THE CHAIR:** But in this case, why should they have said, “I shouldn’t employ the cheapest”?

**Mr Hall:** Why shouldn’t you say that?

**THE CHAIR:** Yes, why in this case wouldn’t you do that?

**Mr Hall:** You would have to say, “We’ve got no record of their occupational health and safety in this town.” They have not put forward an industrial relations policy. They did not; they came to town without one. They have got no expertise in the local building of this infrastructure. They have no knowledge of local regulations or the act. They have got no commitment to training. Where are the young people being trained in this company for the future development of ACT people? They are not based here. They have not got a base here. All of those reasons should be thrown up. We blue like hell with people in the civil industry, but I tell you what: they are still our local people, and in the end they are still putting money back in and there are still going to be people who are going to be members of our union eventually, or who already are. Again, it is a false economy. We are sending money out of our town while we are trying to build our town up.

**THE CHAIR:** If you had the auditing system that you were talking about, do you think that with the Akron matter it would have been worked out a year ago that they were not doing it properly and something would have happened?

**Mr Hall:** If it was in place and happening, Akron would have come to town and they would have known: “Those are the rules and I have to tender to those rules.” So when they started putting in their prices, they would say: “We’ve got to make sure that we bring subbies in that pay super. We’ve got to make sure we bring in workers comp.” All of that changes the whole game. The price would be different, because they know they have to play the game. We call it “the game”. The game is basic occupational health and safety and IR.

**MR SMYTH:** But these issues came up in June last year, and I understand they might have come up as early as 12 months ago. What was done to get Akron to adhere to the contract and, indeed, who was responsible for making Akron adhere to the contract?

**Mr Hall:** We got the LDA involved at that time.

**MR SMYTH:** Okay, but what was done by the LDA? What did the government do to ensure—

**Mr Hall:** The government came in. It was a bit of a hands-off situation. They came in and started asking where the payments were going from Akron for the work. It was a project management system. The liquidator said this, so it is on the record: what was happening was that money that was being given over by the ACT government for subcontractors in the ACT was being sent down to Melbourne to prop their business up, and there was not enough tracking of that, and that is where it fell over. They ran into some problems on some major construction jobs in Victoria, and they were using our cash to keep them liquid down there.

The system that we employ here is not a bad system; the concept of managing and the government directly paying the subbies through the builder is not a bad system. But when it got caught in there and they shovelled it somewhere else, that is when they started squealing, because the blokes were not getting payments. But then what was happening is that the government was only managing the principal contractor. They were saying, “Where’s the money?” They were saying, “Well, we’ve got evidence that we paid the people,” and that is where the whole statutory declaration thing started to unravel. They were starting to fraudulently produce evidence that they were paying people.

If it is just a stat dec, you can probably do that. It is illegal and it is wrong, but if you have to produce a long service leave, superannuation and compo certificate for a person, it is very hard to get those documents and fraudulently produce them. It is impossible.

**MR SMYTH:** When you brought it to the attention of the LDA and the government, was their response appropriate?

**Mr Hall:** They acted on it immediately.

**MR SMYTH:** But did it get a resolution?

**Mr Hall:** It got a resolution initially, but then, without taking credit—“credit” is probably not the right word—probably the reason that triggered the collapse of Akron was that we started demanding the payments, so they had to pull the money out and start paying the subbies, and then they started getting into trouble on their other projects.

**THE CHAIR:** John, have you got a question, because we are running out of time.

**MR HARGREAVES:** Thanks very much for the opportunity. It is relevant to Akron as well. We are trying to get to where in the procurement process these sorts of checks

and balances have to be. I am hearing that we certainly have not got necessarily some things in the procurement process which should be in there. Also, the enforcement is an issue. Mr Smyth has been talking about it today quite regularly: who has the responsibility for this? Is it Workcover, is it ORS or is it the procurement people themselves? That is a question that will challenge the minds of the committee over the next couple of days. But I would be interested in knowing your thinking about the victims in this Akron thing—the subbies and the people working for them. They are the victims in this. Do you think that the new security of payments legislation has got enough teeth in it and will actually address that? That was something which, if my memory serves me correctly, the union was right behind.

**Mr Hall:** I would need to have a look at that. I know that it does work in other jurisdictions. I am not a big crime and punishment person but, at the moment, no-one gets punished for anything. The only person who gets punished now in the construction industry is a builder who has a significant injury or accident. Everyone comes out and hammers the crap out of them—or a subbie. But it is after the person has had his finger amputated or after the person has fallen 20 metres off a dam wall in a drill unit, who has got a colostomy bag and two compound fractured broken legs and all of his ribs broken. That person is made an example of, and that company, maybe, depending on the position, rightfully gets the punishment and gets whipped into through the courts and they get fined. But it is too late in the process. We need to be proactive.

I think we need to send a message to people that you will be rewarded for good behaviour. I am not talking about union good behaviour. You will be rewarded if you have got a proven, practical commitment to safety, a proven, practical commitment to OH&S and a proven, practical commitment to training. I listened to David. It was interesting; he was asked, “Well, what role would unions play in that?” I understand that it would be stupid or naive of us to think that we would have an active role in that. I think it would be stupid or naive to think that the employers association would have the role. We would have to get someone, be it ACT Procurement or someone else, who can play that role and who can be a fair judge on the facts and make the decision and stop the weight being given to the cheapest tender.

**MR HARGREAVES:** On that basis—and this is my last question, Madam Chair—with your apprenticeship board hat on, I noticed recently there was a contract where, in the competition for the cheapest price, it was acknowledged that the number of apprenticeships being offered as part of the contract was actually given weighting so that there was a notional discount given—even though it was not a cash one—because of the number of apprentices in the bid. Would you encourage the government to go down that track?

**Mr Hall:** I think it is essential. It is essential for our industry and the Canberra community if we are going to be able to build anything in the future at any affordable price. The price in commercial construction is exorbitant. To build anything, there are huge prices. Okay, people would blame us for that, by driving up wages and conditions. But you should really think about what is driving that up. We play a role, but the real thing that is driving that up is a shortage of trades people and trained people in our industry. We would say that there is not a shortage of people who would work in the construction industry. There is a shortage of people who can actually do

the tasks. There are plenty of people that want to roll up and get an EBA.

Most of our blokes on EBAs are clearing about \$1,200 a week. They work the hours and they do the work. The issue for us is that we get rung up all the time: “I need 30 carpenters. Where can you get me a carpenter?” You cannot get carpenters anymore. Kids are not doing it. The wage rates are cheap. We have got to put them in barns and not train them. They have got to get out on the job. They want to be out and learning on the tools.

**THE CHAIR:** I think we could talk about this for a lot longer, but unfortunately we have run out of time. Thank you very much, gentlemen, and we now need to move on.

**MILLER, MR JOHN**, Executive Director, Master Builders Association of the ACT

**THE CHAIR:** Hello, John. We need to start pretty well straightaway because we are running late.

**Mr Miller:** I have a very tight deadline too so I am sure we will be able to get through this reasonably quickly.

**THE CHAIR:** I assume, John, you have seen one of these privilege statements before?

**Mr Miller:** Yes, I have.

**THE CHAIR:** Thank you very much for coming in, and welcome. Do you have an opening statement?

**Mr Miller:** I would like to suggest that you take the submissions that we have provided as read, largely. There have been a number of discussions around procurement. The MBA has been proactive, I guess, in terms of its submissions on procurement to the Chief Minister's roundtable that occurred in February last year. We suggested then that we think that the ACT is very well served by its procurement processes. That is not to say it is not without its problems. But, in terms of the projects being planned, designed and executed to a high standard, some of the issues that we addressed included the significant delays to project delivery which are occurring as planners and designers struggle to deal with different agencies when they have to pass through a convoluted planning process prior to commencing the work. Sometimes government legislation will be the source of unexpected consequences with a procurement change.

We have also advocated that we get to a situation, particularly in our industry, where designs are prepared and sit ready on the shelf at short notice. We know that has been an issue over a long period of time, and we have seen that famine and feast situation over the last couple of months, which has caused a good deal of angst. The length of time necessary from project conception to the commencement of construction: there are always issues there, which sometimes translate into other issues regarding the length of time allowed for the project to be delivered. That in itself has its own problems. In listening to the previous speaker, I was interested in terms of health and safety issues. We too are very concerned about health and safety issues. They do represent problems for our industry as we go around and talk to our members.

Again—I think it is an old chestnut—there is the issue of dramatically improving the time that it takes to let the tender. Sometimes obviously the notice is short. The tenders are required back quickly and then the decision-making process is very long and onerous. Of course, that has implications for businesses as they struggle to hold staff—knowing exactly what they are doing, particularly those who are playing in that procurement space almost exclusively.

We did suggest not going to tender until all approvals are in place and drawings are completed. I think that speaks for itself. We did suggest that there are some ways that you could speed up the process by, particularly in terms of consulting engineers,

providing tender opportunities for all but the largest of the projects. Again, we have seen a design and documentation review within Procurement, something that the MBA has been asking for for quite some time. We are very pleased that Procurement responded in the way they have. But, again, sometimes they will not have all the resources to actually conduct that. They have gone out and brought in experts, I guess, to help them with that process. We are mindful of and we are grateful for that.

I think we made a comment in one of our earlier submissions about overreacting when things might go wrong as well, and that related particularly, obviously, to the Bruce Stadium and the hospital demolition where things went on. Obviously you can overreact. We are not suggesting you do not put processes in place. They need to be in place. It is not about short cutting.

Workers compensation: again, that is an issue—in terms of cost, I am talking about here, firstly; it is a significant cost. We do operate differently from New South Wales, but just coming across the border that additional cost adds a significant cost to the taxpayer. Is there some way of looking at that? I guess it comes down to some of those compliance issues. Again, I allude to some of the comments, I guess, of the previous speaker about making sure that people are complying with their requirements. We do not advocate that people do the wrong thing. If there is any suggestion of that, that is just not true.

As I said, I am more than happy to just take questions on that basis. We have provided submissions on a couple of occasions. We have been involved in roundtables. We certainly addressed the terms of reference in our cover on this. I would make the comment that we do as an association enjoy good communication with ACT procurement and we are able to talk to them about issues as well and they are prepared and willing to listen. As I said, we will not always have it right.

**MR HARGREAVES:** We have heard in the course of the morning about the issue of subcontractors getting paid from large contractors. I know that the MBA had an involvement in the dialogue around the emergence of the security payments legislation.

**Mr Miller:** Yes.

**MR HARGREAVES:** I understand that the MBA was very keen to see the legislation come out, to protect its members against those people who are not compliant. I would be interested in your views on that—whether or not it has an impact, and should there be more stuff in the actual procurement process. Dean Hall was saying that it would be a good idea to reward good behaviour rather than to penalise bad behaviour. As I understand the security payments legislation, it is penalty for bad behaviour, really.

**Mr Miller:** Yes.

**MR HARGREAVES:** “Have a good look at this stick or we’ll whack you with it”—that sort of approach.

**Mr Miller:** Yes.

**MR HARGREAVES:** Can you see any way in which we can actually put the reward system in place? Or how do you feel about the security legislation?

**Mr Miller:** Firstly, we have had considerable consultation with our members over the security of payments. I think, by and large, our people feel that if people are doing the right thing it should not be a problem for them. Clearly, we have got a legal system, but people still break the law every day. Unfortunately, we have got to put in place legislation that might deal with that. In an ideal world you would live without it. But the reality is that you cannot. As I said, we know it is going to be there. Your concept of rewarding good behaviour has certainly got some merit, but I think it is really trying to get to the point where everybody behaves well and you do not have to reward good behaviour; people who are continually miscreant, if you like, fall out of the system. Again, we do not advocate bad behaviour; we advocate good behaviour. Our people believe security of payments. It will not stop it. I guess people can still take it beyond the security of payment system, if they wish to, into the mainstream legal system. Hopefully it will have an impact.

**MR HARGREAVES:** This is probably my last one, because I am grateful for the submission. We also heard and saw recently regarding apprentices—the ACT do not do it, I do not think—a contract where there was a discount for the number of apprentices put on, a notional discount on the price admitted for the tender, based on the number of apprentices that were going to be taken on for that particular job. So it was not a cash reduction but a notional reduction for the competitive pricing part of the weighting of criteria. Do you support that sort of approach being put into the ACT procurement system? How do you feel about it?

**Mr Miller:** Obviously, we are going to do everything we can to encourage the industry to take on apprentices. As I said, it might not always be just around the incentives. The industry have got to understand—and I think they do understand—that we have got to make sure that we have got a workforce coming behind us. We do know—again I allude to the previous speaker; I heard part of that conversation—that we need to do everything we can to encourage people to take the apprentices on. But we do not want to leave those apprentices sitting in jobs where they are not actually getting the training that they need as well; where it is about just giving companies money and then they run away with money and do not necessarily provide the right level of training or make sure that the apprentices are doing the real work that they need to do. We want to train them properly.

Everything has got to be looked at in terms of apprentices. It is difficult. There are different views about which is the right way, which is the wrong way. But, ultimately, the industry has got to decide: “If we are going to survive this, we need to train people.” I guess there are many mechanisms that you could put in place. I do not think you want to punish; I think you want to provide incentives to do it. I think that is what we have to focus on.

**THE CHAIR:** Thank you. You obviously heard the previous speaker; he was talking about doing more thorough auditing to see that employers had met their obligations re workers comp, long service leave et cetera. Does that seem a workable or useful idea to you? Do you have any comments on that?

**Mr Miller:** We are not the regulator as a member association. But, having said that, we do not encourage bad behaviour, as I have said before. Many of the people the previous speaker was alluding to are our members. So we need to do everything that we can to encourage people to do the right thing. The workers compensation pool obviously is properly representative of what is going on out there. As I said, we do not have people taking short cuts.

**MR SMYTH:** Paragraph 6 of your submission talks about “dramatically improve the time taken to let tenders”. Is there an industry standard or a desirable time frame in which to let the tender?

**Mr Miller:** Faster than what it is at the moment, Brendan.

**MR SMYTH:** Can you give us a figure?

**Mr Miller:** As I said, we are seeing some tenders coming out within a short space of time and then notification not taking place—they will be months out. I think most people would like about two weeks—certainly the latest a month—to let people know. It really is very difficult for these people to schedule their workforces and just not know what is going on. They might hold back on another job because of that. I think we all know it is a longstanding issue.

**MR SMYTH:** Sure. I have had concerns raised with me that people have put in tenders that then the government has not followed through with. Is that a problem for the industry that you are aware of?

**Mr Miller:** There have been certainly times when things have been withdrawn—something is not right with them and they have had to withdraw that. That makes it again very difficult. It is a matter of getting the processes right up front.

**MR SMYTH:** Which, I assume, is why you are saying make sure that you have got the drawings and the specs—

**Mr Miller:** The design documentation—everything sorted—approvals, the lot, yes. Again, sometimes it might not be a full withdrawal; it might be just a delay. Someone thinks they are starting work and all of a sudden they are not starting work for another four weeks. Again, trying to reschedule a workforce around that is very costly. It becomes costly to the taxpayer as well.

**MR SMYTH:** All right. You talk about the workers comp pool in paragraph 13, and in the ACT it is 8.5 per cent of gross wages while in New South Wales it is 4.1 per cent. How do we fix that dilemma?

**Mr Miller:** We are not, I guess, quite comparing apples to apples in terms of the systems in New South Wales and the ACT. It comes down to the compliance. That has a lot to do with that as well—making sure that everyone who should be in the pool is in the pool. That would help, but, obviously, we are paying rates here that are far greater than across the border. It makes it very difficult when you have got people coming in from across the border who are paying workers compensation far below what our local people are.

**MR SMYTH:** Okay. And land release: is that still a problem?

**Mr Miller:** I think you might need to ask the government about that. Our view is that we have had the situation, certainly pre-Christmas, where there has been a lot of work on. In terms of being able to get to particularly important areas, spreading out the workload is an important aspect of doing that. As I said, when it is all banking up, you might get some delays on land release—particularly if you have got a civil construction industry that is at full capacity—to support the land release program.

**MR SMYTH:** In paragraph 14, you say that “running in parallel to the planning and design hurdles are the handover procedures”. What is wrong with the handover procedures?

**Mr Miller:** With a lot of projects, it is just the time delays at the back end that obviously cause issues as you try to negotiate through that back end part of the procurement process. Again, it is a time issue for industry, really. That is where the big problems occur.

**MR SMYTH:** And specifically you mentioned the actions of city parks. How is that adding considerable risks to contractors?

**Mr Miller:** I probably have to get a little more detail on that one; sorry, Brendan.

**MR SMYTH:** That is okay. Paragraph 15: there are often disputes, and we all understand that things vary while you are building, involving additional time and cost into the equation. Part of the discussion today with some of the other people that have presented has been about: how do we make things work better? You have got a solution here for an expert review panel. How do you see that working?

**Mr Miller:** We have been talking through, and it is part, I guess, of the discussions that have been around the roundtable. I guess it is collaboration between industry and government. It is a partnership, obviously. The government relies upon the private sector in terms of delivery of the programs. We can see the issues that are out there. That is, I guess, why we are here, and that is why we have put forward some of these suggestions here today. As I said, you need to be in constant dialogue. We have seen recently the establishment of an industry reference group, which might help overcome some of those issues.

It is not always about establishing committees, but, as I said, if you are not having dialogue and people do not understand what is holding up some of these procurement processes, you are not going to get any better outcomes.

**MR SMYTH:** Okay. And the last one, given the time: on the first page of the detailed submission, the last paragraph starts with:

The MBA believes that over time, the ACT has become excessively handicapped by required institutional processes that add very little to the quality of project outcomes.

**Mr Miller:** Sorry, which one are you referring to there?

**MR SMYTH:** The last paragraph on the submission to the Chief Minister's procurement roundtable, on the first page.

**Mr Miller:** Yes.

**MR SMYTH:** Can you give us some details on that?

**THE CHAIR:** Or do you want to take it on notice, given that it is 11.30 and you may need to leave?

**Mr Miller:** Again, in short, it is going across all sorts of agencies; it is the cross-agency communication and the like which delay the whole process. As projects come in there and they get delayed, there will be additional costs further down the track. So they are cross-agency issues, I guess. We are saying that we need to make sure that all the agencies are talking to each other, so in terms of delivery times we are shortening them as much as possible.

**MR SMYTH:** Which I assume is why you then go to make sure when you put the tender out that the tender is actually ready—sort out the internal government problems before you put the tender out?

**Mr Miller:** Exactly. They are internal issues. We have seen just recently a case where a tender was let and the DA was not finalised. Again, it caused issues and, again, it has cost implications for government, the taxpayer.

**THE CHAIR:** Yes. Thank you very much, Mr Miller.

**Mr Miller:** Thank you.

**GILLESPIE, Mr GERRY**, Director, Revolve  
**HEWITT, Ms KAY**, Director, Revolve

**THE CHAIR:** Welcome to this hearing of the public accounts committee.

**Mr Gillespie:** Thank you.

**THE CHAIR:** Before we start, Mr Hargreaves wishes to make a statement.

**MR HARGREAVES:** Thanks very much, Madam Chair. I need the record to show that I had involvement with some of the processes up to the period to October 2008. I have had no involvement in the processes or the issues since that date when the responsibility for Territory and Municipal Services transferred to the Chief Minister. Having read the submission, I need to suggest, Madam Chair, that at some point you show the witnesses that—

**THE CHAIR:** Yes.

**MR HARGREAVES:** Because I think there are statements contained in there which are particularly serious. There is an offer for evidence to be produced and I would ask the committee to do so. I would be interested to know, before I take the final decision, whether the action which is included in the submission, the litigation action, is on foot or still under consideration. If it is under consideration then this process of the committee can proceed. If it is on foot and has actually commenced then the committee needs to be particularly careful about what it receives and what it says so as not to allow an influence either way to go through the court system. I would be interested in just the answer to that. It is a simple yes or no at this point.

**Mr Gillespie:** The matters that I wanted to bring up today—

**MR SMYTH:** Hang on.

**MR HARGREAVES:** No, I just wanted to know whether it is on foot or whether it is pending.

**MR SMYTH:** You have got to open the process because it is all evidence—

**THE CHAIR:** Yes. Before we get responses from Mr Gillespie and Ms Hewitt we should do what I should have done, in fact, before asking Mr Hargreaves to make his statement. I draw your attention to the privileges statement. Have you seen it? I am happy to read it to you, but it is probably easier if you read it.

**Ms Hewitt:** I have just read it.

**Mr Gillespie:** No, that is fine. We have read it, thank you. I am aware of the—

**THE CHAIR:** You are happy to abide by it?

**Mr Gillespie:** Absolutely, thank you.

**THE CHAIR:** Thank you. First, if you ask that question—

**MR HARGREAVES:** Madam Chair, thank you. I am concerned about my own participation if, in fact, something is on foot or pending. So a simple yes or no on those two will probably be very useful at this stage.

**Mr Gillespie:** As we stand at the moment, no.

**MR HARGREAVES:** That is fine, thank you.

**Mr Gillespie:** We are resubmitting the action to the court in the near future.

**MR HARGREAVES:** Did you say “resubmitting”?

**Mr Gillespie:** We will be resubmitting the action in the near future.

**MR HARGREAVES:** Okay.

**Mr Gillespie:** Having said that, Mr Hargreaves, the action will be substantially different to the actual material that is in that original submission to you.

**MR HARGREAVES:** The previous action has been concluded?

**Mr Gillespie:** The previous action, I believe, is sitting in a circumstance at the moment where the barrister whom we have engaged is conducting other more serious matters or matters he regards as more serious.

**MR HARGREAVES:** If it is still before the courts and not at a conclusion then it is, in my humble opinion, on foot.

**Mr Gillespie:** All right.

**MR HARGREAVES:** Do you see what I mean? I am not trying to—in fact, I am going to do you a favour in a minute.

**Mr Gillespie:** I appreciate your circumstances. As to the issues that I am going to raise today, however, the main issue that related to Revolve’s circumstance with the ACT government and/or Thiess was in direct relation to a specific contract arrangement. Whilst some of those issues that I was going to bring up today are, indeed, covered in the submission, there are two points of interest that I would like to bring up, and that was whether or not there was a right within the ACT government or ACT NOWaste to put the Revolve business as a business out to tender. The second issue was whether or not the actions of Thiess and the ACT government in removing Revolve from the site contravened the Trade Practices Act 1974.

**MR HARGREAVES:** We are not engaging in an argument here, Madam Chair; we are still going for clarification: is the contract that you are talking about the one prior to October 2008 or the one post-2008—in other words, the 2009 contract?

**Mr Gillespie:** The one that I am talking about—

**MR HARGREAVES:** The one that you are going to talk about.

**Mr Gillespie:** The contract that I wanted to talk about today or the matters I wanted to talk about today relate specifically to an agreement between Revolve and Thiess which existed at the time that the tender submission was put out in 2006.

**MR HARGREAVES:** That is right. On that basis, I will not take part in the considerations because I have had communications with Revolve over the issue, particularly in relation to outstanding rents and things like that, which I believe still are unresolved. The figure has gone up to 70 grand or something like that and I do not want to take part in that discussion. I have read your submission and because I have a view based on my previous experience and decision-making process it would be inappropriate, I think, if I were to question you guys on those issues. If we were only talking about the contract from 2009, about which I have absolutely no knowledge or involvement, it might have been appropriate on a probative perspective, but at this stage of the game I think it is probably a more proper issue to absent myself.

**Mr Gillespie:** Thank you.

**THE CHAIR:** I am sorry for the delay. I guess we should now more formally start. Do you have an opening statement?

**Mr Gillespie:** Yes, thank you, Madam Chair. It is unfortunate that Mr Hargreaves feels he cannot listen but, still, in this particular instance I wanted to raise the issue of procurement and the matter of how members of the Legislative Assembly or members of parliament or councils react is entirely dependent on the supply of information they receive from the public servants. As an acting public servant myself, I am very aware that the information I supply to ministers has to be precise and accurate because you can actually make fools of them or put them in very different situations. As Mr Smyth would know, people do that from a public service perspective, unfortunately and regrettably.

However, what I wanted to mainly hinge on is whether or not the information that was supplied to the people who went through the procurement process was, indeed, accurate. I would claim that from the outset of the establishment of Revolve 22 years ago—now 23 years ago—in 1988, basically, Revolve has been harangued and harassed by people within the ACT public service. I at one stage was part of that haranguing and harassment so I am very aware of how that structure and operation worked.

The reason that happened was that the department of territories, who ran the facility at waste management in 1988 when Revolve was established—it was later handed over, I think, to the first Follett government—it had full support, as I think Revolve has always had full support, of any governments in the ACT. There were not many complaints about the support from the political structure. The difficulties that we have always had, I think, pertain from the fact that people's noses were put of joint when Revolve was established in 1988, and that vendetta has continued to this day. It has taken many forms.

I would like, in this one particular instance before you, to stick to two particular points. I have given the secretary copies of a second document. It is dated today's date. The two principal points are: did the ACT government have the right to put Revolve's business out to tender? The second one was: did Thiess and the ACT government contravene the Trade Practices Act in their treatment of Revolve? I would suggest to you that the five points following clearly outline that that is the case.

Point 1 is, of course, that Revolve has always been a tenant on the landfill. It never was and never has been a service provider. There was no need ever to put that business out to tender because the business was not providing a service under the normal constraints of the act. That business was provided as a community service by a community group for the benefit of the community. The issue there, of course, is that the ACT government did not have the right to call a tender for Revolve's business. It did have the right—and no-one would contest the right—of a landlord to put its site up for release at the end of a lease. No-one would contest that. What we are contesting is whether or not the government or ACT NOWaste had the right to put the process to procurement when the business itself, which was what was put out to tender in the 2006 contract—when it was put out, it was the business that was put out to tender, not the site.

The second point is that Revolve was forced under duress to sign an agreement with Thiess by ACT NOWaste on or about 20 November 2002. By virtue of the fact that Revolve was forced to sign that agreement by ACT NOWaste, at that time Thiess was a service provider to the ACT government and Revolve had been quite happily working in a subcontractual arrangement because Thiess, after all, were the landfill operator and the administrator of that site. We were responsible to them. But at that time—this is before my time as a board member and before my time as president—Revolve were forced by the then manager of ACT NOWaste, Leigh Palmer, to sign an agreement with Thiess allowing what he referred to as a favourable agreement for Thiess.

In that agreement Revolve, as it was, still continued to pay rent, but it was also responsible for supplying two staff down at the transfer station to staff the Thiess operation. This put Revolve at an extreme disadvantage. The rent, in effect, went up from a small amount of money per year of around \$7,000 to \$90,000 in one go. That action, I would submit, under section 51AA of the Trade Practices Act, forced Revolve into an agreement that it did not want to enter. So it contravenes that aspect of the Trade Practices Act. It was, in fact, unconscionable conduct.

Point 3 is that Revolve has had a continuous and ongoing contractual arrangement with Thiess to operate its business on the Mugga landfill since 28 November 2002. If you look at the additional piece of paper I have given you with a small red mark on it, you will notice that in schedule 1 it refers to the termination date of the contract. The termination date appears on the top left-hand side of that page and then over in the four listing points, listed (a) to (d), at the top of that, it says, "the later". The termination date, therefore, is the later of the following dot points. The bottom of those, (d), is the one that we would directly refer to. It says, basically, that as long as Thiess has a contract which substitutes for that head contract to which that agreement exists then Revolve has a contract with Thiess.

At the time that Thiess ejected Revolve from its site on that block of land, Revolve and Thiess still had an agreement under the existing contract. Therefore, the tender process itself was unlawful. The contract which replaced the head contract is indeed the contract that is currently in operation with Thiess. Therefore, Revolve still has a contract with Thiess. This is a very serious matter under procurement law.

Point 4 is that Revolve was the only company to submit a tender for the weighbridge in 2006. I have brought this up in other circles before and have made many attempts to communicate my concerns that I do not think the Legislative Assembly has been given the correct information. Mr Corbell stood up in the Assembly in November last year and stated that no suitable contracts were submitted for that weighbridge contract.

I would submit at this point that I have a very good reputation in the waste and recycling industry. I have been in this industry for some 20 to 30 years. I worked for Mr Smyth when he was the minister for the environment. I do not know of anybody in any institution in the waste and recycling industries who would have a bad name for me in terms of the operation of anything I have submitted. I was part of the tender that put in a submission for the weighbridge in 2006. Not only did Revolve not receive consideration for that contract; it was not consulted during the tendering process, despite the fact that it was the only company that submitted a conforming tender, and it was not consulted in any way by Procurement or ACT NOWaste about the nature of that contract.

The contract was then given to Thiess on the basis, as Mr Corbell said last November, that no suitable contracts were submitted. This is simply and clearly not true. The difficulty that we have with this process is that that contract for the weighbridge was then written into section (e) of the landfill contract. It appears now as part of the landfill contract documentation that Thiess have signed with the ACT government. To me, this is unlawful, because it is outside the procurement process. The procurement process has simply been utterly bypassed by the fact that this thing has been signed up with no public consultation.

I can understand, and I do know, that under the procurement act the minister has the right to make appointments without due consideration if he thinks there is a suitable case. In this instance, Revolve had put forward a legal and conforming tender and was not consulted in the process and still has not gone through the process of being told why that happened.

The last point I would like to bring up refers to in some ways recent actions of the Auditor-General, because of the pressure, I think, that has been put on the Auditor-General. I think some of the pressure on the Auditor-General may well have started in 2004. In 2004, the Auditor-General, in a report on ABC radio, and confirmed by Mr Graham Mannell, who worked for ACT NOWaste at the time, was concerned that there was a conflict of interest between the operator of the weighbridge and the operator of the landfill. There is a very simple methodology on how you run the landfill. The calculations that you make on how much you pay the contract operator are predicated on how much goes over the weighbridge. If you have got the operator running the weighbridge and the landfill, it is a clear case of the dog looking after the chops.

I would suggest to you that what, indeed, has happened in that process since then is that, now that the weighbridge tender has again been given to Thiess, Thiess are now in a situation where they not only won the landfill weighbridge and the landfill contracts, but also they run the Mitchell contract and the resource recovery facility. There is a direct conflict of interest between the resource recovery facility and the actual operation of the Mitchell transfer station and the weighbridge; that is, if one company is being paid to operate the Mitchell transfer station and the weighbridge, is being paid to operate the landfill weighbridge at Mugga and is being paid to operate the landfill at Mugga, surely it is cheaper for them to take this table and put it into a hole in the ground than it is to put it up for sale, as Revolve would, for \$5 or \$10.

We are saying that, when all of those things are put together, all of these issues have been identified by the Auditor-General, but there are now five clear conflicts of interest in relation to waste management in the ACT. We cannot allow this situation to continue.

My final submission, in terms of the conclusion, is that when we have social structures, we all get together in a community because of the notion and nature of trust. We trust each other. We hopefully get on a bus and it will reach its destination. We hopefully get into committees because we can trust each other to look after the community. We live in a community because of trust. Unless we can have a procurement process that operates on trust and within clear legal parameters, we are in dire straits.

I think Revolve has been abused in this process going a long way back, even to the time when Brendan Smyth was the minister. There was information that he was given about the transfer station at Mitchell that was utterly incorrect. That has continued as a litany of structures and lies, I would suggest, right up to this very day, where you, as the Assembly, have been totally misinformed about the management of waste and recycling in the ACT. Thank you.

**THE CHAIR:** Do you want to start?

**MR SMYTH:** All right. What outcome are you seeking?

**Mr Gillespie:** Completely apart, Brendan, from anything that happens in relation to our activities with Thiess, I think this procurement committee must call for an independent inquiry into the contract management of that process in 2006-07. There are obviously so many holes in it. I know that I have made this appeal to other people in the Legislative Assembly before. But I think it would do great honour and great service to all members of the Legislative Assembly if this thing was put out in the public arena by somebody whom we can all trust, who is from outside this town. I think it is important that they come from outside this town. But it must happen.

**THE CHAIR:** Do you think this problem is just a problem for this particular contract or is it a problem throughout ACT Procurement?

**Mr Gillespie:** As I said in my submission, the difficulty with procurement is that nobody can be an expert in all fields. No matter how clever you are, either as a Legislative Assembly member or as a public servant, there is no way that the people

in Procurement can cover the broad range of skills that are required of them. What happens, of course, is that you have to go back to the person who asked you to put the procurement process together in the first place to get a final opinion.

One very strange thing that happened to us in this process is that we lodged an official complaint with the commissioner for the environment. Yet the commissioner for the environment, knowing that we had lodged a complaint with her, appeared on the panel that made the selection for the last tender. We are saying that, as a Revolve operation, we operate for the benefit of the community. I do not make any money out of this. In fact, Kay Hewitt and I have put all of our life savings into trying to keep this business afloat for the last two years. I have contributed about \$80,000 and Kay has contributed about \$150,000. This is a very serious matter for us in terms of the committee. I do not think it can be adjudicated on by a group of people sitting in a procurement process who are totally unrelated to the issues at hand.

**MR SMYTH:** Just for the record, you talk about the Attorney-General making comment about potential conflicts of interest. Where did he do that at the time?

**Mr Gillespie:** The Attorney-General—I am sorry, I cannot give you the date—

**THE CHAIR:** The Auditor-General.

**Mr Gillespie:** I think it was a question that was raised by Ms Le Couteur in the Legislative Assembly. In his response, the actual words used by the minister were that there were no suitable tenders submitted. I would contest that. Again, Brendan, the information that Mr Corbell had only came from the people who predicated whether or not the tender was actually suitable.

**MR SMYTH:** You say that in 2004 the Auditor-General identified a potential conflict of interest.

**Mr Gillespie:** Yes.

**MR SMYTH:** Where did she do that?

**Mr Gillespie:** I am not sure when it appeared. It appeared on the ABC. I can supply that to the committee, if you wish.

**MR SMYTH:** If you would, yes, so that we can reference it.

**Mr Gillespie:** I can supply you with the press release.

**MR SMYTH:** Are you talking about the Auditor-General or the Attorney-General?

**Mr Gillespie:** When I talked about the actual conflict of interest that was picked up in 2004, it was identified by the Auditor-General.

**MR SMYTH:** Okay. In your actual submission, not the supplementary document from this morning, on the first page, you devote three paragraphs, starting with the word “firstly”. You raise this issue whereby Procurement, on behalf of an

organisation inside the government, puts out a tender but then to make the determination goes back to the people that asked them to put it together for the expert advice.

**Mr Gillespie:** Yes.

**MR SMYTH:** What is wrong with that, though?

**Mr Gillespie:** I think there is always going to be a conundrum there when you are asking for advice from people who might have preconceived notions. In the instance of waste, for example, Revolve has never been overly promoted in all of the materials that have been put out through ACT NOWaste. Indeed, in your time as minister, it probably was the last time that any of that happened. There has never been any sort of active promotion, because the people who work in ACT NOWaste are not regular Revolve customers. I think I was the only person in that organisation who was a regular Revolve customer, and yet people in ACT NOWaste will tell you what a terrible job Revolve do. We had that adjudicated on by the national governance people from Canberra university several years ago, and they said that we were doing an excellent job. Yet the people who make the selection for the procurement people have a very negative opinion of Revolve.

**THE CHAIR:** But in general, the idea of the procurement is to get something to meet the client's needs. So, from that point of view, it would seem fairly reasonable that the client has a major say.

**Mr Gillespie:** I do not see that it is unreasonable that the client has direct involvement. But what I would suggest is that there needs to be some external authority that comes from perhaps even another state or from the judiciary that actually has some sort of input into how that selection process is made.

For example, Ms Le Couteur, we went through a mediation process with the ACT government in 2005 at the point where I actually became the president of Revolve. I am still trying to work out why I did that! But when we got into this circumstance where we were going through that mediation process, ex-Judge John Clarke was saying to ACT NOWaste: "But I don't understand. This is a community group that is reducing your waste to landfill, which is an objective, and it's giving you jobs on a plate. Why don't you like them? Is it a personal thing?" I mean, is it a personal thing? That is what I would like to know.

**MR SMYTH:** What was the answer?

**Mr Gillespie:** There was no answer. In fact, it only raised the hackles more, because Revolve was awarded, out of that mediation process, \$66,000, which really started to bring the screws on to Revolve after that time.

**MR SMYTH:** When was that decision?

**Mr Gillespie:** That was in 2005.

**THE CHAIR:** Is part of what you are saying, getting back to the external power of

the selectors, that in this instance the ACT government did not have the expertise in this particular area, rather than in general that the client should not be the major part of the selection process?

**Mr Gillespie:** I am sorry; could you repeat that?

**THE CHAIR:** Are you basically saying that in this case of waste the ACT government just has not got the expertise to know how to do it; that the ACT government can reasonably say, “We want someone to do something about waste.” Clearly, they can do that much. But when we get down to the next level, and how we are going to do it, are you saying that, really, they just did not have the expertise?

**Mr Gillespie:** No, I do not believe so. The expertise that a lot of ministers have seen since the no waste by 2010 strategy came out in December 1996: Graham Mannall, as the policy development person in ACT NoWaste, has done a phenomenal job. He actually got to 60 per cent. I would sincerely doubt, though, the figures that have been quoted since 2001 about what is actually going on to landfill, because the management structure changed, the management methodology changed, and, lo and behold, no matter how much recycling is done in this community—which, by the way, is unaudited; the recycling is not audited—the amount of waste going to landfill still sits at 200,000 tonnes, and has done since 2001.

There is not an appreciable decrease in the waste to landfill, but when you look at those figures—this is where it comes into, I think, questions of behaviour or questions of propriety—when you look at the existing contract, Thiess are paid one amount for 100,000 tonnes of waste going to landfill and they are paid \$376,000 a year more for 200,000 tonnes of waste going to landfill. Also, the other complication is the grey-haired blokes who run Treasury make \$10 million out of that weighbridge. They do not want to see it go anywhere.

There is a conflict of interest between the very structures and nature of government as well as the structure and nature of contracts. I do not know exactly—my suggestion may seem a little pathetic in that we need to bring outside expertise into that—but we certainly need a broom. We need some sort of pipe cleaner put through the dog. Something needs to be done about this process of compiling—these contracts are worth many, many, many, many millions of dollars over the life of them. They are a huge expenditure. We are saying in Revolve that we have the ability—this would be a very good reason why Thiess and/or others may not want to see us succeed in Revolve—and we have submitted numerous plans to get the waste diversion up to as high as 85 per cent. They are never taken up, and I would argue they were never taken up because as soon as we go from the 7,000 tonnes or 10,000 tonnes a year and we are doing up to 50,000 tonnes a year, everybody starts losing money, except Revolve.

How do you get over that? How do you write a contract that actually has the interests of the climate and the interests of the community at heart, rather than the interests of the people who run the process and the interests of the people who run the weighbridge and the interests of the people who run the contract? That is who we are serving here.

**MR SMYTH:** Part of the inquiry is to look at the concept of social tendering where,

apart from value for money, you look at other social outcomes. Revolve's history has also been as an employment body that looked after people with perhaps fewer skills than others. What is happening in that regard on the tip at this stage?

**Mr Gillespie:** At 1995, Revolve had 34 employees, the majority of whom were full time. It was turning over \$1.25 million. We are currently down to about three employees. That has been a loss to the community, because the two companies who have been given the tender in preference to Revolve have no social interest other than putting money in their own pockets. Aussie Junk, in fact, was conducting its business at Mitchell in such a way that we actually reported it to the manager of ACT NOWaste, before the tender was awarded to it for Mugga Lane, and yet no action was taken. We gave the government information out of a statutory declaration that said that it was operating in an unlawful manner, and yet it was still given the contract.

So what do you do about the interests of the community? The \$1.25 million we generated at Revolve went straight back into the community's pockets and was reflected in saved landfill and better climate outcomes. Whatever money comes into the pockets of those who run the tender after Revolve has gone simply goes into someone's pocket and it leaves the community.

**MR SMYTH:** Could you just make it a bit clearer about Revolve's employment policy and who they employed?

**Mr Gillespie:** Revolve has a specific in its model rules which says that the money it generates is to specifically go to the employment of people. So every dollar we make is dedicated to the idea of employing unemployed people. That is what it exists for. That is the reason why it started. That is the reason why it had government blessing in the first place.

**MR SMYTH:** That does not occur now?

**Ms Hewitt:** Can I just add a bit to that?

**Mr Gillespie:** Yes.

**Ms Hewitt:** When we were at Mugga, we also had the work for the dole program. We were looking at employing people with disabilities. Might I add, too, that Revolve also had a workshop/repairs centre at Mugga. We also had our Better Bits at Mugga, and neither Aussie Junk nor the current contractor has anything like that. They do not employ people that are unemployed. They are employing the few people who have gone from Revolve up to Mugga—old staff. Most of the people at Mugga Lane now are ex-Revolve staff, but a very long time ago.

The other hassle that I have with the way things are operated—sorry, Gerry—is that we were told when the weighbridge contract was not given to us that we did not have enough experience, but now the new contractor at Mugga, in what I call the Revolve shed—he has more experience than Revolve, and he has not been in the industry for 15 years? So that, in itself, to me is a conflict of interest. They said we did not have enough experience, but they have given it to somebody that is not as experienced as Revolve.

Might I add, too—Gerry probably does not want me to bring this up—that we know for a fact that the current contractor had a phone call from these people that say who should get the contract to say that it would be well worth his while to put in a tender. We have stat decs to that effect.

**MR SMYTH:** That ACT public servants approached people to put in—

**Ms Hewitt:** To put in a tender: “it would be worth their while”.

**MR SMYTH:** Can the committee have copies of those stat decs?

**Ms Hewitt:** You can.

**Mr Gillespie:** Yes.

**MR SMYTH:** You also say on the front page of your submission:

We would maintain that the tender process was manipulated and we have extensive evidence for this.

**Mr Gillespie:** Yes, we do.

**MR SMYTH:** Can you provide that to the committee?

**Mr Gillespie:** Yes. We could actually provide you with comprehensive records, if you like, in relation to all of those issues.

**MR SMYTH:** Sure. Can we go back to the issue of whether or not the government had the right to put Revolve’s business out to tender.

**THE CHAIR:** And was that exactly what they were doing?

**MR SMYTH:** I appreciate the intellectual property that Revolve developed over its life, but the notion of recycling at a tip is hardly something that Revolve owns.

**Mr Gillespie:** That is fine. I could easily elaborate on that. When Revolve signed the original select tender, you might recall that there was a gentlemen by the name of Mundy who was causing all sorts of strife. He was trying to scavenge on the landfill.

**MR SMYTH:** Yes.

**Mr Gillespie:** The ACT government at the time had given sole scavenging rights to Revolve, so Revolve agreed to sign a select tender so that legal action could be taken against scavengers. Since the time of that original operation, in 1993, the ACT government brought in commercial charges and the weighbridge operation on the landfill, and it has progressively excluded the public from operating on the landfill. It just makes sense; everybody else does it. The ACT was unique in that people could drive up to the tip face in their Lamborghini and chuck a small bag of waste out and drive off again. You had to provide safe entry and exit for all that sort of nonsense.

But, in terms of the nature of the business, at the time that the transfer station issues evolved Revolve became, or has been for some years, recognised by the tax office as a charity. All of the goods that come to Revolve are donations from the public. They are not waste. Under waste legislation, all organisational structures who handle waste make sure that when waste is either disposed of at landfill or put on to a footpath that waste becomes government property. That gives you control over health issues and waste issues at the same time.

The goods that Revolve receives in its business are not waste; they are donations of goods to a charity for the purpose of resale. So we would say, in relation to that argument of whether or not the government had the right to put that business out to tender, that business had changed substantially in its nature. The intellectual property associated with that business was the fact that Revolve operated as a charity. Its intellectual property is the fact that people were making donations. Its goodwill is reflected in the 6,000 signatures we were able to put on a petition to Mr Hargreaves after Revolve lost its tender.

What we are saying is that the government does have the right, as does every landlord, to put its premises out to tender or to another organisation once the site is vacated at the cessation of a contract. The difficulty that I have is, first, that the contract was never ceased; it has never ceased to be in function. It still is in function to this day. The second problem that I have is that the business is actually the business of Revolve. The business belongs to Revolve. It is identified at that site, and when the tender was put out in 2006 it did not say a resource recovery site was up for tender; it said the resource recovery business was up for tender.

**MR SMYTH:** Okay.

**THE CHAIR:** Thank you very much for attending today. I think, unfortunately, we have run out of time, so this public hearing is adjourned.

**The committee adjourned at 12.06 pm.**