



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, 1 APRIL 2010

**Secretary to the committee:
Mr D Abbott (Ph: 6205 0443)**

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 0127).

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Amended 21 January 2009

The committee met at 9.32 am.

PHAM, MS TU, Auditor-General, ACT Auditor-General's Office

NICHOLAS, MR ROD, Director, Performance Audits and Corporate Services, ACT Auditor-General's Office

HEARNE, MR RUSSELL, Audit Manager, ACT Auditor-General's Office

THE CHAIR: Good morning everybody, and welcome to this public hearing of the Standing Committee on Public Accounts inquiry into ACT government procurement. I welcome the Auditor-General, Tu Pham, and staff. We have your submission; thank you very much. You have the privilege statement in front of you. Do you want me to read it to you or are you all right with it?

Ms Pham: No, thank you. We are well aware of it.

THE CHAIR: Good. Auditor-General, do you have an opening statement? We do have your submission.

Ms Pham: Thank you, Madam Chair, for the opportunity to be here again to assist the committee in its inquiry.

Our submission is a very brief one. We refer to an audit of procurement that we conducted in 2005. Since then, the government has responded very positively to a number of recommendations from that audit. Nevertheless, in recent times, when we did various audits we still found some deficiencies in procurement activities. So we are here to respond to any questions that the committee may have about the recent audits that we have done. I refer, for example, to the ones on FireLink, on the headquarters at Fairbairn and the housing contract. Some of these actually raise issues about procurement activities.

MR HARGREAVES: Before you start, Madam Chair, if the committee has questions of the Auditor-General which relate to the procurement processes around the ESA headquarters at Fairbairn, I would like the record to show that I will not take part in those discussions, nor the questions, as I was the minister at the beginning of that process.

THE CHAIR: Thank you, Mr Hargreaves. My first question is not really going to be about any of those other procurement activities. I understand that you receive a small but steady stream of inquiries, complaints—whatever word we want to use—from people who have been involved in a procurement process where they felt that the right results did not occur. Certainly, I have had a couple of representations along those lines. What processes are there in train for addressing those issues? Is appealing to you the way to go? Are they doing this because there is not a more effective way or are the complaints frivolous? I am interested in your views on this.

Ms Tu Pham: I would like to make a quick comment and then pass it on to Rod. From 2004-05 to now, we have received perhaps 17 representations which touched on procurement issues. We took all of them seriously and we put effort in to examine some basic information that they provided to us. Some of them certainly had valid grounds. Some of them may reflect their own perception of the process. We went

through established processes within the agency, within our office, to handle these inquiries. For many, we referred them back to the department for further examination. For others, we put them in our future planning to incorporate into a proper performance audit. Generally speaking, we do not have sufficient resources to follow up many of these representations. Rod is in charge of all of these representations.

Mr Nicholas: A marvellous responsibility. The Auditor-General is correct. We have received quite a number of representations. We receive many over the years that relate to a whole range of activities related to ACT government. Many of them of recent times have touched on some aspect of procurement or of contract management issues following a procurement process.

With respect to the typical process from our perspective, the correspondents often write to us because they feel that we are either the last port of call or are able to independently review a matter. That is not necessarily the best approach for us. Certainly, we are able to review matters independently and conduct investigations under the Auditor-General Act or performance audits in detail under the Auditor-General Act.

Our approach typically is to review the information that has been provided to us and to try and identify whether sufficient information has been provided for us to act to make a decision. The first decision we are likely to make is whether the Auditor-General at this time ought to be involved. Often we do not have enough information. Sometimes we seek information directly from the agency involved. Sometimes we refer the representation that we have received back to the agency. Sometimes we speak to the correspondent and encourage them to refer the representation to the agency. So it is a little bit of horses for courses. A little bit depends on the information we have received and the nature of the representation.

MR SMYTH: Is 17 a large number of representations on a single issue?

Mr Nicholas: We probably receive around 12 to 15 representations a year, so over the course of five years or so, you are looking at maybe three or four related to procurement issues in some way. They are not always directly a procurement matter. I guess we do not often find a representation that says, "Look, this process is so deficient that we think it's null and void," or whatever. We often find questions where the correspondent perhaps does not have a full understanding of what value for money might represent and has a view that because their submission or their tender was the cheapest, they should have received the contract. So sometimes it is a matter of a learning process and a bit of education, if you like. That is not to be dismissive of the representation, by any means.

Other cases have indicated that a flawed process has been arrived at because perhaps there is a perceived conflict of interest or perhaps there is a perception that the right tender process was not applied in the first place, that sufficient organisations were not offered an opportunity to bid for it. So there are sometimes matters around that. Occasionally we have issues that arise out of select tender processes. We have had matters that relate to the disposal of assets. Of course, disposal is a procurement issue now. So there is a whole variety of matters. I would not necessarily say that it suggests there is a crisis in procurement processes, by any means. It is a significant

number nevertheless.

We review these investigations. We may refer them back to the agency. In many cases it is the agency which has the initial responsibility to investigate whether a proper process has been applied. If the agency is not involved then perhaps the Government Procurement Board is also a party that the correspondent can approach to inquire further into the procurement processes and the reasons or to resolve whatever concerns they may have.

Overall, though, the system seems to work reasonably well. As Ms Pham has said, we do not often have the resources to devote to a full investigation ourselves. That is partly why we need to push these things back to the agency. We do often consider them as part of our strategic planning and factor the issues that have been raised in to other audits, such as a pure procurement audit. For example, in the accommodation review that we did some while ago, we looked at the procurement of the ESA headquarters as part of that. So we work within those confines as best we can.

MR HARGREAVES: Your views on the role of the Ombudsman in concert with yourselves and anybody else: have you got a comment to make on that?

Ms Pham: A number of issues referred to us equally can be referred to the Ombudsman. Sometimes people went to the Ombudsman first, did not get a good response and then came back to us. There are occasions when we liaise with the Ombudsman and follow up what they have done and see whether or not we feel that there is a further need for us to do something outside what the Ombudsman has done. But there is not a very clear distinction between our role and the Ombudsman's role in terms of government agency decisions regarding procurement activities. I understand that people may be more familiar with the Auditor-General's role in the ACT than the Ombudsman's role. So I am not aware that the Ombudsman would receive the same number of representations.

Mr Nicholas: I would expect that the Ombudsman is also challenged with resources and certainly has a lot of activity that his organisation investigates. But we do receive, as Ms Pham is saying, the occasional referral from the Ombudsman. I think their first port of call also is to go back to the organisation responsible and seek a response from that party. So it is more or less the same process that is applied.

MR HARGREAVES: I guess what I was thinking about, and I would be interested to hear your views on it, is whether or not the Auditor-General's role in these sorts of things is more systemic and more about the processes and how robust and transparent they are, as opposed to the Ombudsman's role, which would be case specific. So if somebody has a grievance, the best place they can go is the Ombudsman, who will drill down into a particular transaction, whereas the Auditor-General's Office is going to be about the process of a given set of transactions—not so much necessarily an individual decision about this one or that one, but more about the process of the decision maker itself.

Mr Nicholas: I would suggest that is a reasonable distinction. Certainly, when we look at the representations that have been made to us, we look for indications of systemic problems rather than individual issues. We look for understanding of the

policies, practices and procedures that are being applied or should be applied within the ACT government. So that is not a bad distinction at all, Mr Hargreaves.

Ms Pham: Indeed, because of the limited resources, if we take on an individual issue, we have to drop some other work, whether or not it is already underway or planned in our audit program. So we do not normally take individual cases unless we believe that it is representative of something deeper or wider within the system or we believe that the lesson learnt from the recommendation from an individual case has much wider implications. We do consider all of that and that is the reason why we do not normally act on individual cases.

MR SMYTH: In your submission, in the last line on the impact on tendering organisations, you mention:

... some of the reviews conducted by the Audit Office indicated the need for further improvement in procurement practices and management of procurement processes.

The conclusion says:

The various audits, representations and requests for investigations discussed above suggest the need for further improvement and development in government procurement practices and processes.

Could you be more specific about what improvements and developments you would like to see occur?

Mr Nicholas: Overall, we have a view that the policies and procedures within the ACT government are reasonable, are sound. Our concerns are more around the implementation of those policies and those practices. Certainly, the examples that we have mentioned in our submission—the ESA headquarters, the ESA FireLink and a couple of other areas along those lines—imply that the agencies are not applying the procedures as well as they need to; they are not necessarily thinking as strategically as they need to.

There is a concern from our perspective that sometimes there is inadequate review of the decisions that have been made regarding procurement—testing of alternative actions, for example. The value for money issue quite clearly is an important one, and whether there is full consideration of alternatives in the initial decision to undertake a procurement. We have some concerns regarding the select tendering processes. Open tendering obviously is an important part of transparent government, but we see a number of organisations that have chosen to take select tenders and occasionally there are ones that we have seen that have come unstuck. FireLink, for example, is a particular case where we had concluded that largely the terms of reference that were used for that particular procurement activity were designed with a particular supplier in mind.

When you see that sort of thing, you have got some concerns immediately about the use of select tendering. We do not have a lot of information to go by. We have not done a lot of audits that have touched on this specifically. But I guess we have a degree of unease about the use of select tendering. It is largely just the implementation,

I think, that we are looking at. We are looking at whether agencies have made a sound decision, whether they have documented the decision well.

We have seen in a couple of representations that have been put to us that when a challenge has been made regarding a particular procurement process, if the agency and Procurement Solutions together have had the documentation developed well for that particular procurement activity, they have been able to respond in a pretty succinct and a pretty useful manner to the correspondent and have maybe not resolved the issue itself but at least have provided a sound response to the correspondent.

Again, that harks back to our constant theme that documentation is very important in government process, particularly when you start making relatively subjective decisions. In a way, with a decision about whether a submission should rank No 4 or No 5 or score five points or four points or seven points in particular assessment criteria, it is important that there are sound processes that support that. We have found, on occasion, that they are lacking.

MR SMYTH: In the section “Integration of sustainability considerations” at the top of page 5 the sentence in the middle reads:

However, management of compliance to the environment plan or monitoring program ... was not effective.

You quote one report there. Is that widespread? Or, again, because you have only done the one report in that area, is it based on that statement?

Ms Pham: We only can comment on the audit that we conducted. That is what we found in the road projects in terms of lack of coordination between various agencies to deliver an environmental management plan. There was some requirement for major projects to have an environmental management plan, in consultation with other relevant agencies within the ACT government. For this road project, Horse Park Drive, we found that the process was lacking. The environmental considerations were not great. Russell can comment, if he wants to.

Mr Hearne: I would refer the committee to page 63 of the report, which sets this out in some detail.

THE CHAIR: Could you say which report?

Mr Hearne: I am sorry; this is *Road projects: Fairbairn Avenue upgrade and Horse Park Drive*—report No 1 of 2009.

MR HARGREAVES: Mr Hearne, because I am a lazy old geriatric and I did not bring my copy down, would you give us a thumbnail sketch of what is in there, please?

Mr Hearne: The preliminary planning commented on conservation and the environment. Environment ACT had some interaction with, I understand, Procurement Solutions and Roads ACT and made some requirements, particularly with regard to a stand of trees and some Aboriginal places. The road planning had to

take that into account. There were some delays and there was some confusion about that to the extent that the road project was delayed when those considerations were not taken into account in a timely manner.

MR HARGREAVES: No doubt that would have had a financial implication on the total bill for building the road there.

Mr Nicholas: Quite likely, yes. I guess the issue that Mr Smyth has mentioned is more about the project management as part of the procurement process. The coordination issues certainly were lacking in the Horse Park Drive audit. There were matters in terms of environmental leaching—some of the materials that leached out of the road fill et cetera that had been used in that particular instance. Again, there were matters that were relevant to the development of an appropriate environmental plan, coordination of the various agencies involved, the timeliness of the activities and whether the activities eventually occurred.

THE CHAIR: We have spoken to Procurement Solutions about integrating environmental and social issues. I hope I am not doing them a disservice when I say that I think the summary would be that if the agency asked for something environmental or social they would endeavour to do so but they do not add any of that overlay themselves. Would you think there would be any issues from a probity point of view if it became one of the standard parts of the procurement process that you looked at environmental issues or social tendering issues?

Mr Nicholas: The responsibility for the procurement activity itself rests with the agencies that are involved. Procurement Solutions is really a provider of some services within the ACT government. Procurement Solutions is basically acting on the instructions of the agency. It is a bit like lawyers acting on the instructions of their client. My initial response would be that the agency itself needs to identify whether there are environmental and/or social issues associated with any particular procurement activity, just as it would with any other government activity. If there was a specific requirement within the guidelines, though, such a requirement could endorse a need for the agency to at least do that consideration. So there would need to be some particular guidance about what they would be looking for, how they would demonstrate that they had met that activity or that requirement and then how that particular matter was going to be implemented further by Procurement Solutions.

Ms Pham: I also add the comment that Procurement Solutions is seen as a central agency to provide whole-of-government advice and policy regarding some of the procurement activities. There is a role for Procurement Solutions to articulate or to give some guidelines which could help agencies to consider these issues as specific to their own procurement activities. Like any other activities, procurement activities need to be supported by a business analysis or some type of proper study of costs and benefits.

In that process, environmental considerations and social considerations should be taken into account. I think the principle for procurement is quite broad and within the concept of value for money it encompasses other considerations as well. In practice, I agree that with more guidelines and specific manuals prepared for agencies, the agencies will be in a better position to implement them. Sometimes policy and

principle are very well written, but without proper guidelines to follow up and articulate that to the front-line people who make the decisions, it is very hard for them to implement them. That is the issue we have. We think the policy and the guidelines in terms of procurement, the system and governance, are all very sound. The implementation is the one that we always have a problem with in auditing.

THE CHAIR: I think that is true for life in general. It can be tricky.

MR SMYTH: Going back to the start of your submission, you talk about your 2005 audit. On page 2 there are nine dot points. The first two say that, overall, agencies demonstrated a satisfactory level of compliance with the legislation and that central monitoring in large agencies was generally effective. The next seven highlight particular instances of weakness in their application. Are you aware of whether or not these seven dot points have been addressed or are these all areas where more work needs to be done?

Mr Nicholas: We have not undertaken any further specific procurement audits since this 2005 audit. I expect that what we would need to do if we were to answer your question with any high degree of accuracy, as we normally want to produce, would be to do another audit with the focus on procurement itself. Certainly, there have been a number of changes within government that have been articulated through both the government's response and the government's submission to this inquiry through changes in policy and guidelines that have sought to address some of the issues.

The centralisation of procurement from \$20,000 up within Procurement Solutions, for example, is one of those areas that I think lends itself to some redressing of the concerns that we had with the smaller procurement items. We commented earlier about our concerns about documentation. I cannot say whether that is good or bad, on the whole. With the couple of audits we have looked at, there have been some concerns about documentation. Certainly, we had concerns with the FireLink issue. We had concerns that some of the policies and practices, and sound practices, were largely ignored during some stages of the ESA relocation audit process. So there are some activities that we would have concerns about.

It would seem to us that we have not come across so many issues that it would still lead us to be highly doubtful or have the same degree of lack of confidence that we had an issue with. We would be reasonably hopeful that a lot of the reforms that have been introduced by government have actually redressed those matters. Again, implementation is the issue. That can only be tested by us through another audit. We would note that most agencies in their own internal audit processes include procurement audits of some form, so I guess that is being constantly tested at an agency level as well.

MR SMYTH: The issue of single select: you have raised this a number of times but you do write about it on page 4 and at the top of page 5. Is there a concern that there is not sound justification for going to single select?

Mr Nicholas: We can only state what we have seen in terms of the particular audits we have looked at. Certainly, we expressed some concern with the single select process in the FireLink audit. I guess that starts to get us a bit nervous. We look to the

procurement guidelines which indicate the sorts of matters that the chief executive of an agency needs to consider before a decision is made about a single select or a small panel selection process. They seem to be quite reasonable. So if one assumes that an agency has done their work well, that does not necessarily mean that there is going to be a problem with a single select process. Obviously, there are going to be occasions when single select is the right move. There will be other occasions when a wider tender process might be important.

Ms Pham mentioned earlier the sound business case to support a procurement process, and that is particularly relevant, I think, with the larger procurement activities. We need to have a sound business case that supports it—a reasonable analysis of alternatives and options and good consideration of those. So I guess the short answer is that we have not got anything in a broad sense that suggests single select is a particular problem. I have not, for example, tried to extract details of the number of single select processes that have been undertaken by ACT government agencies as a percentage, say, of all procurement activities. But it is an area that we are interested in. Any time that the fully competitive process is narrowed, I believe there is some chance for increased risk being there or lack of transparency and potentially lack of value for money.

MR HARGREAVES: Didn't I hear you say a little earlier, Mr Nicholas, that one of the issues that you have is with documentation that supports these decisions, so that you cannot actually see the trail of the decision-making process robustly?

Mr Nicholas: We have had some problems with that, yes.

MR HARGREAVES: So in conceptual terms it is not a bad thing, but with the actual implementation of it, coming back to the Auditor-General's comments earlier, if the documentation is not robust then you do not know whether it is a rort or whether it is right?

Mr Nicholas: Documentation is king for us. So we look for that and we need to see that the stuff is well supported. The decision needs to be made and needs to be documented; that is right. And if we do not have that documentation then we are left with the position of trying to form a judgement, obviously, on that basis.

THE CHAIR: The single select document or single select decision: is that a public document?

Ms Pham: No.

Mr Nicholas: No.

Ms Pham: If they enter a contract and the contract is above a certain amount then it has to be in BASIS. So if the contract is a result of a select tender process then it will be public documentation. I think I remember—and I would need to check this—in the information provided in BASIS, there is some tick about whether it is a tender process or a select tender process. I would need to check.

Mr Nicholas: The contract itself will become public once it is on the BASIS website.

So if it is over \$20,000 I think they are encouraged to put that on. But the decision to go to a select tender is, in the main, for the chief executive, and it will be made based on the information and recommendations that are made to that chief executive. I would not expect that that would typically be a public document.

MR HARGREAVES: When you make a decision about a comparative tender, the decisions around that comparative tender are not public because they are regarded, aren't they, as commercial-in-confidence and they have a bearing on companies and all of that—companies' reputations and all manner of things? Am I correct in assuming, though, that the decision as to whether to go to three, five, seven, open tender or single select is really just a decision about the process? There is no commercial-in-confidence there. So with respect to the decision as to what type of transaction you might undertake, whether it be quotations, whether it be tenders or whether it be single select, subject to it being an amount less than that to be agreed by cabinet, it would presumably be in the public interest to make that available.

Mr Nicholas: There may be some commercial issues involved. There may be some specific justification for and details involved in the nature of the product or the specifications for the product or the service that are confidential. But generally, I think you are right. This is an administrative decision and it is based, presumably, on a range of matters that are spelt out in the procurement guidelines. They generally address whether this is the best process for the ACT government at this time. Will it deliver a sound procurement result? Will it deliver value for money to the territory against the various criteria? It is an administrative decision. I would be hesitant to say that none of them involve a commercial-in-confidence matter, but in the main I suspect there is—

MR HARGREAVES: The decision as to choice between applicant A and applicant B is actually exempt from the FOI process, isn't it? It is only a view: do you think that decision as to the type of procurement process ought to be, or is, exempt under the FOI?

Ms Pham: I tend to agree with you that, if the public is aware of some sort of information—for example, every year the government can report on the percentage. In the list of contracts that they normally publish on the website, there may be another piece of information in there which says that the contract came about as a selection tender process, an open, competitive or single tender process.

In terms of percentage, the more select tender processes that are used, the less confidence the community may have in openness and transparency.

As Rod said, there are very good reasons from time to time for chief executives to exempt departments from going to the full and open tender process. But it is only by exception rather than a normal practice. So when that practice of a select tendering process is used more often than an open tendering process, that is when you start to worry about the misuse of the select tender process. So some information regarding the percentage of select tender processes compared to open tender processes I think would increase that transparency.

MR HARGREAVES: Are the guidelines the chief executives need to adhere to in

choosing whether to go for select tender, or open, or even panel selection, contained within the Procurement Act?

Mr Nicholas: They are contained within the procurement policies and the guidelines, yes.

MR HARGREAVES: And are those guidelines robust enough to make sure that the process, even for single select tender, is robust and transparent?

Mr Nicholas: Generally encompassing. I think they cover the range of matters that one would want to consider or that the community would want to see considered.

MR HARGREAVES: These are obligatory on the part of the chief executive and not optional?

Mr Nicholas: They are guidelines, Mr Hargreaves, so I am not quite sure. They are issued under the Procurement Act—

MR HARGREAVES: Guidelines are meant as sort of pathways, aren't they? They are not sort of rigid—

MR SMYTH: They are issued as a central document; they are not done by each CEO.

MR HARGREAVES: I guess what I was getting at was that if somebody breaches an act there are severe penalties which can occur, but if you just bust a guideline every now and again—

Mr Nicholas: They would represent best practice of procurement within the ACT government and we would generally expect agencies to apply them, and I would think that the government would generally expect agencies to apply them and certainly the Government Procurement Board would generally expect agencies to apply them.

MR HARGREAVES: Yes. Thank you.

MR SMYTH: Just on the single select, earlier you used the words “degree of unease” and you spoke about the brief being constructed to meet a supplier. Can you elaborate on that?

Mr Nicholas: We are harking back to the FireLink audit, Mr Smyth, and that was an occasion when we had looked at the specifications for that particular product and the conclusion that we reached was that the specifications were designed with a particular provider in mind—or supplier in mind. We reviewed that process and also found indications that there were a number of alternatives or options—not necessarily alternatives, but options—available to the ESA at the time but they do not appear to have been canvassed in any particular detail. So, when you look at that, it gives us, obviously, an uneasy picture about that particular procurement practice. When we reviewed our—

MR SMYTH: That is fine. It was isolated to that one instance; that is all I wanted to ascertain.

Mr Nicholas: Certainly, that is the one that I have in my mind. When we reported on the government procurement audit we did say that we lacked the confidence that the ACT government had achieved value for money in procurement as a result of a range of matters that we spelt out in the particular audit, particularly for the small items of procurement. So I guess that is the unease that we have felt, at least at that time.

MR HARGREAVES: It is a pretty serious thing to come away with the suspicion that somebody might have had the answer then worked out the question. Were your suspicions sustained around that or was it just a—

Mr Nicholas: Around FireLink?

MR HARGREAVES: lingering suspicion that it goes on? We can use FireLink because FireLink could apply to anything else that you guys have not looked at yet.

Mr Nicholas: We found that we had significant problems with the FireLink proposal, such that the project was discontinued by ESA for a whole range of matters. Yes, I think it was a significant issue and certainly we had some concerns about that.

MR HARGREAVES: I guess the issue is that you had a suspicion that the people had a particular supplier in mind and constructed the tender specifications around that outcome. Were your suspicions sustained or were they just lingering ones?

Mr Nicholas: The provider that they had in mind was the provider of the product. The evidence showed—

MR HARGREAVES: It's quacking like a duck here.

Ms Pham: It is a new product. It is still under development and I think in this case we felt that the evidence clearly indicated that the authority, the Emergency Services Authority at the time, identified an available product and then developed an accelerated type of procurement process around an identified product even with the knowledge that they had to have further customisation to meet the requirements of the user. That is where the big issue arose because we entered into an agreement on a product which was not yet ready to meet the user requirements. That is the issue that you are talking about and that certainly—

MR HARGREAVES: So the answer is, in terms of your suspicions, that yes, they were sustained. A nod or a wink is fine with me—no need to say any more.

THE CHAIR: Can I just talk about the value for money principle, which I think we have all agreed does not necessarily mean the cheapest cost. Cost is an easy objective thing; it is going to cost \$5 or whatever. The other items involving value for money are generally not so easily given a dollar value. How can agencies put the intangible risk issues and other issues together and get a robust result in terms of value for money?

Ms Pham: A number of the criteria used in a tender evaluation process are subject to judgement by the tender evaluation team. Certain things are quite obvious, such as the

cost of providing the service. Others, including the capacity of the provider to provide services, their ability to manage the relationship with a department or another criterion which says something like that they have a good understanding of the business that they serve—all of these evaluation criteria are subjective to some degree and I do not think there is a way to get away from it. The important thing is that all the evaluation criteria have to be specified beforehand, made well known to the tenderers so that they can address these, including the weighting given to each of these criteria, the way that the evaluation team apply their knowledge to assess these criteria—

Mr Nicholas: There are obviously a range of matters. As the Auditor-General is saying, many of them are to a degree subjective. The decisions for value for money obviously extend to, I would suggest, whole-of-life cost, but there is the ability of the organisation or the provider to meet the quality that is required, the satisfaction or the degree of assurance that the procuring agency has that they can continue to support the product; for example, provide back-up equipment or technical support and so on. So there are a whole range of matters.

As the Auditor-General is saying, it is about the process being transparent in the first place: the procurement processes outlined, the matters that are going to be considered in determining value for money, the priority that is given to those, the weighting that is given to those. In the end, it is a call that one expects an experienced evaluation team, an assessment team, to be able to make and to be able to support. So, again, documentation is king and they need to be able to show that they have made a sound decision. You cannot just say, “I’ll put my finger in the air and because the wind blew a certain way I like this answer.” It has to be: “We have been able to demonstrate, against the criteria and the ranking and the assessment process that we have developed, that this is the best answer.”

Ms Pham: In many procurement activities the capacity of the tenderer financially and otherwise to support the product or the service is one of the common selection criteria, yet we know cases where the government entered into a contract and the company went bust. So even assessing the financial capacity of a company is not an easy job and we do hope that the people in the evaluation team look further than at just what is provided to them, because tenderers are very good at giving supporting information to make them look good in terms of being assessed against a list of criteria. But it is up to the evaluation team to follow up and check and check and check, including looking into their financial status and their capacity to deliver not in one year or two years but for the life of the contract. Maybe sometimes we did not do as well as we should have.

MR SMYTH: Just to finish, as a thought, given all that you have said about single select, that there is a degree of unease, there are environmental concerns, there is a lack of coordination between departments and that you have had a significant number of complaints over the last five years about the procurement process but you do not have sufficient funding to follow up fully, is it something you may put on your agenda in the future in terms of a performance audit?

Ms Pham: We actually considered the procurement issue as a follow-up audit but we would like to wait for the outcome of the inquiry—

MR SMYTH: Okay, so the pressure is on us to—

Ms Pham: and see any aspect identified by the PAC through the inquiry that needed further consideration. Rod has discussed with me the potential for doing an audit of the select tendering process.

Mr Nicholas: We have spoken to this committee in the past about our long list of audit topics. There are certainly a few that are procurement related or contract management related on that long list. It is a matter of them bubbling to the surface, if you like. Select tendering is one of those areas. I would be a bit interested in the confidential text arrangements within the contracts and the procurement process as well. As you know, there was a process where we were providing information to the committee. That has changed since the government changed the Procurement Act, in about 2007 I think it was, so we would be interested to see whether that is functioning well. There is another example.

We have had for a while some concept of perhaps examining Procurement Solutions and some of their activities there, so there are a whole range of matters, some of which have been included in our proposals for the next couple of years, some of which will wait. I think Tu is right; it is a little bit dependent upon the outcome of this review as to the priority that we might attach to that. It changes over time. If we get a lot more representations regarding specific matters on procurement issues, we may see that that is a higher priority than it has been in the past.

MR SMYTH: Okay. Thank you.

THE CHAIR: Thank you very much, Auditor-General and your colleagues, for your evidence today. We will have a brief adjournment.

Meeting adjourned from 10.23 to 10.35 am.

WINTERS, MR JAMIE
WINTERS, MR JUSTIN

THE CHAIR: We will resume the inquiry into procurement in the ACT. We have before us Jamie Winters and Justin Winters. Before you give evidence, I noticed that you were looking at the privilege statement. Have you read this and are you happy with it?

Mr Jamie Winter: I have read it, yes.

THE CHAIR: For the benefit of the committee and Hansard, can I check that there are currently no outstanding legal activities which would make anything sub judice?

Mr Jamie Winters: There is no civil action on our behalf. The Fair Work Ombudsman has proceedings against Dennis Richter as company director of Aussie Junk. I have spoken to Terry Hennigan, the lawyer for the Fair Work Ombudsman; I spoke to him again yesterday and there are no concerns with what we are presenting here today.

THE CHAIR: Great. Thank you very much. Do you have an opening statement?

Mr Jamie Winters: I do. The territory have a responsibility in meeting the requirements of the procurement principles of probity and ethical behaviour as contained in the Government Procurement Act 2001. They must ensure that the necessary policies and procedures exist for exercising scrutiny over the performance by suppliers and subcontractors in relation to their employee and industrial relations obligations. They should establish audit and procedure protocols in their contract management process to monitor that compliance.

Until 23 July 2008, I was employed by Aussie Junk Pty Ltd to work at the Mitchell Resource Management Centre. Aussie Junk was subcontracted to Thiess Services, the principal contractor, who hold government contract No C00377. In September 2007, we officially notified Thiess Services and ACT NOWaste of serious breaches around entitlements and environmental concerns at the Mitchell site.

Chris Horsey, the Manager of ACT NOWaste, informed me that Thiess had been instructed to conduct an audit. Thiess Services engaged KPMG to conduct a payroll review of operations at the Mitchell site. The review report states the following:

Aussie Junk did not comply with specialist industry allowance.
Aussie Junk did not comply with the money handling allowance.
Aussie Junk incorrectly calculated the annual leave and sick leave entitlements.
Aussie Junk did not pay leave loading or public holiday pay to employees.
Aussie Junk employees were not paid their superannuation in quarterly instalments and it was only in July to September that Aussie Junk paid almost all their superannuation guarantee obligations for the last 18 months.
Aussie Junk has not paid the superannuation guarantee charge to their employees or to the ATO. The award includes provisions for various other allowances. However, KPMG has not tested whether the employees were eligible for these allowances.
Aussie Junk have been aware since May 2007 that they have not been complying with the award's wage rates.

The final page of that report identifies that an employee who is not on the payroll records was paid \$80 cash a week regardless of hours worked. It is interesting to note that this employee was issued with a group certificate for \$4,160, which is 52 weeks times 80. This equates to an underpayment of around \$20,000 for that year under review.

Due to the limitations imposed by the Thiess Services engagement letter, KPMG were unable to investigate thoroughly and only had access to information voluntarily supplied by Aussie Junk. Due to these limitations and no power of authority, they failed to uncover that Anthony Cochran, Peter Winters and Lyn Chamberlain had not received any superannuation and in fact were not even registered with the fund. Anthony was not registered until February the next year and Peter only shortly before he was sacked in July. Lyn Chamberlain has three group certificates from Aussie Junk but to this day has never received any superannuation.

Despite this report, we were told that the audit found only minor admin errors and that Aussie Junk had six months to fix them up. I was later to receive an email from John Hargreaves's office stating: "The audit concluded there was no evidence that staff were being systematically underpaid or that superannuation payments were not being made."

After further complaints in May 2008, Thiess were instructed to conduct a second audit. In this audit report, Thiess stated that, based on their assumptions and interpretation of the award, staff working regular 45-hour weeks were in fact only regular part time, doing 22.8 ordinary hours a week. All other work was overtime and hence we were only entitled to super and holidays on the 22.8 hours. They claimed that because Aussie Junk were paying super and holidays on the 45-hour week, this offset the underpayments of the award, failure to provide RDOs and other allowances.

Aussie Junk had five full-time employees, all working standard 45-hour weeks. They worked every weekend and their working roster did not change for the entire period under review. The definition of "ordinary hours" is clearly defined under the act and it is illegal to offset an award.

Even with their manipulation of the figures, they could not offset an underpayment of \$96 a week to Peter Winters and \$39 a week to Lance Spencer. Despite identifying an underpayment of \$5,000 Peter Winters was sacked exactly two weeks later, without notice or entitlements.

Government contract C00377 states clearly, in section 21.1, that Thiess cannot subcontract out any part of the operational services without the prior written consent of the territory. It also states that Thiess Services must provide a management plan which outlines staffing levels, duties, rosters, handling procedures of waste and traffic management. They must provide staff to direct traffic, assess loads, manual recovery of reusable items, litter picking et cetera. Aussie Junk's duties included directing traffic, manual recovery of reusable items, assessing loads, litter picking, sweeping around the push pit, directing site usage to appropriate areas, controlling and manning the cardboard, oil, batteries, glass and plastic recyclers.

Thiess Services ran the entire Mitchell operation with one Thiess employee on site—the bobcat driver. All other work was provided by Aussie Junk other than the weighbridge, which was also subcontracted out.

The fee structure under the contract calls for an invoice with breakdown of costs and sufficient detail on the invoice for the territory to determine that the service provider has provided the operational services in accordance with the agreement. Did the government give written approval for Thiess Services to subcontract out these operational services as required under the contract? Has Thiess been billing the government for services it is not providing?

The territory has a memorandum of understanding with UnionsACT which is an enforceable tool which makes companies who breach their industrial relations obligations ineligible to tender for government contracts in the ACT. Thiess Services have breached their obligations and, according to undertakings the territory have made through the MOU with Unions ACT, are therefore ineligible to tender for any government contracts until they rectify those breaches. Thank you.

THE CHAIR: Thank you. That is—

Mr Jamie Winters: That is a lot.

THE CHAIR: I was going to say it is a somewhat comprehensive list of things which I do not believe we are going to be in a position to deal with in great detail. The committee is inquiring into procurement and we will issue a report with recommendations. I want to make it clear that we are not really in a position to arbitrate on the facts of the matter. The committee is not part of executive government. We will make recommendations but we—

Mr Jamie Winters: I understand that.

THE CHAIR: It may be that in this case there are other options. Do you want to talk some more about that?

MR SMYTH: Perhaps we could just proceed cautiously. You have made some fairly strong statements there.

Mr Jamie Winters: I have the documents here. I made copies for you.

MR SMYTH: What is it that you are interested in the committee doing for people like Peter and Lance?

Mr Jamie Winters: I am concerned that the government contract had been tendered and part of that contract is for the acceptance of asbestos on site. It is reasonably expected that the men working in that environment were going to come into direct contact with toxic or hazardous materials, yet there is no enforcement that the staff have any training in identification of toxic and hazardous materials.

MR SMYTH: So given that it is a contract that the government let through Procurement ACT and that this is an inquiry into government procurement, the

question therefore is: how does the government enforce its contracts?

Mr Jamie Winters: I have got a copy of the contract through freedom of information. There are clauses, there are provisions, to make sure that they are fulfilling their employment and industrial relations obligations. Emails I have from the Chief Minister and from Mr Hargreaves state that, based on our areas of complaint, they instructed Thiess to do these audits and then they got back to us and said that there was no evidence. How can anyone who read that KPMG payroll review say there is no evidence?

MR SMYTH: Who asked KPMG to do the review? Did Thiess—

Mr Jamie Winters: Thiess did. I have the emails here. I can—

THE CHAIR: Thiess did it after representations had been made to Thiess?

Mr Jamie Winters: Thiess were instructed by ACT NOWaste.

THE CHAIR: Yes, so Thiess did not do it spontaneously?

Mr Jamie Winters: No. We made complaints in around September. I think the date of the report was only three or four weeks later.

MR SMYTH: And you mentioned a second audit?

Mr Jamie Winters: Yes.

MR SMYTH: And who conducted that?

Mr Jamie Winters: Thiess did their own. They were allowed to investigate and report on it, which was effectively their own breach of contract. They did their own report.

MR SMYTH: The copy of the contract: are you able to provide the committee with—

Mr Jamie Winters: I only have one copy but you are certainly welcome to—

MR SMYTH: Take a copy of it?

Mr Jamie Winters: Yes.

THE CHAIR: We can photocopy it; thank you.

MR SMYTH: Perhaps we can go to the process that you followed. When you started to raise these concerns, was it easy, as an ordinary citizen of the ACT, to contact the government and raise concerns about the contracts?

Mr Jamie Winters: It was easy to do that, but to get any answers was very difficult. We had discussions with Aussie Junk for the previous 12 months before we made these complaints official. We were told in no uncertain terms to be quiet or end up

without a job. That is when we went to Thiess and we went to ACT NOWaste. I had already had informal discussions with Chris Horsey and Thiess Services in regard to the issues we had.

MR SMYTH: As you progressed with the government, because at the end of the day it is a government contract, was the quality of the answers from the government acceptable?

Mr Jamie Winters: No, it was not. We had no idea what award we were under. All of this information that I have come across I have had to source myself. I have had no help from any party at all.

Mr Justin Winters: Initially, in talking to Chris Horsey from NOWaste, he called us liars. He was not interested at all in listening to us and helping us.

Mr Jamie Winters: There is a point of interest which I would like to put. Jeff Beaver was a manager with the Fair Work Ombudsman. He has since moved to another position. In my correspondence with the Commonwealth Ombudsman, he provided an email for me and yesterday he told me that I am welcome to share that and he has put his new contact details for the committee to call him directly. In this email he stated:

During the course of the FWO investigation several matters came to our attention in associated material obtained in support of the matters you have put before the CO. In addition, officials of the FWO would make themselves available to provide the CO with statements and affidavits, if required, regarding the information put to it by ACT Government officials.

And I have a copy of that.

MR SMYTH: We might get a copy of that. In exploring the issue on behalf of people like Peter and Lance, you eventually went to the minister's office. Did you at any time contact Procurement ACT?

Mr Jamie Winters: No, we did not.

MR SMYTH: Is there a reason for that? Was it just that you did not know—

Mr Jamie Winters: We did not know the procedure. We had no idea. It was only late in the game that we were even aware of the workplace ombudsman.

MR SMYTH: Were the answers from various ministers' offices helpful, less than helpful?

Mr Jamie Winters: No, they were not. One email from Mr Hargreaves said that he would check his jurisdiction in this matter. Shortly before we were sacked, we knew we were going to be dismissed, and I personally emailed all the MLAs. I got an acknowledgement of receipt from Mr Stanhope, Mr Hargreaves and I think Mr Barr. There were a few of them. But the only people we actually had a direct conversation with were from ACT NOWaste, and they told us that it was Thiess's problem. I had a conversation with Chris Horsey at the drop-off point. I asked him about all the evidence and he actually said to me, "You can't prove your claims." I said, "Hang on,

I've got statements here," and he proceeded to get in his car and drive away before I could show him.

The only person that did come and see us was Dean Logan, who at the time was the senior adviser to Seselja. He was fantastic; he came and saw us and he took statements. He actually rang Thiess Services on our behalf and he provided a statement to the Fair Work Ombudsman for us. His conversation with Howard Cranfield, who was the New South Wales state manager of Thiess, is very revealing. I do have copies of it but—

MR SMYTH: In terms of access to the government, the inquiry we are doing is looking at how the government procures. It is a bit difficult; we are not here to arbitrate. But, for instance, as a worker finding out what your rights and entitlements were, how easy was that?

Mr Jamie Winters: No, that was very difficult. It took us well over 12 months even to get told what award we were under.

THE CHAIR: One of the other people who could have been involved in this was UnionsACT. As you pointed out, they have a formal role in this process. Did you talk to them at all and what sort of response did you get?

Mr Jamie Winters: Yes, we contacted the TWU. For reasons that we are not aware of, Klaus Pinkas did not do a lot for us. I can only suggest that their information, when they made these phone calls, was, "We've done audits and there's nothing wrong; these guys are troublemakers." People believe that Thiess Services are a well-known company, a large company, and you are going to assume that they are playing everything by the board. If government officials are saying that everything is fine, what reason do they have to suspect otherwise?

MR SMYTH: Given it was a government contract, how did the government behave in upholding their obligations?

Mr Jamie Winters: I do not think they did. I would say they did not uphold their obligations because they certainly did not—

Mr Justin Winters: They did not listen to us.

Mr Jamie Winters: No, they were not interested at all.

Mr Justin Winters: We came in and talked to Bill Stefaniak about all of this as well, when he was in opposition at the time.

MR SMYTH: The committee has to write a report about how government procurement is conducted in the ACT. What improvements would you like to see or what suggestions could we make that the government should take on board?

Mr Jamie Winters: Someone has to oversee, if they do request audits to be conducted. Someone has to be accountable for what is in these audits. I realise that Mr Hargreaves's emails to me stating there was no evidence were based on

information he was receiving from the department. But someone was giving him that information. The reason we were dismissed was based on that Thiess audit report. If it came back stating there were gross underpayments and breach of the award, they could not sack us. Dennis Richter has made a recorded interview with the Fair Work Ombudsman and made a lot of serious allegations on the involvement regarding how we came to be sacked. He was instructed to do certain things and he has made that official.

MR SMYTH: Who was that?

Mr Jamie Winters: Dennis Richter, the managing director of Aussie Junk.

THE CHAIR: Where did he make these—

Mr Jamie Winters: He made a recorded statement with the Fair Work Ombudsman. He stated that he was picked up at the airport by Thiess, he was taken to the bank, they told him how much to make the cheques out for. We were sacked in front of three Thiess employees and Mr Richter, the New South Wales state manager, the ACT state manager and the head of HR. They called the police on us to vacate the premises. He has made claims that Thiess has a lot of control over his business.

THE CHAIR: Thiess had effective control over the business?

Mr Jamie Winters: Yes. He has got some answers to the matter and he is trying to defend himself.

MR SMYTH: So in regard to noncompliance with the act and with the contract, as a recommendation that the committee might make, what should the government be doing to ensure that contracts are complied with?

Mr Jamie Winters: Someone needs to look at the reports thoroughly and someone needs to have an understanding of the awards. For anyone who reads that report and does not know what ordinary hours are, someone has made a recommendation on these audit reports and it is just totally wrong.

THE CHAIR: Do you think it could have been that actually they did not know what ordinary hours et cetera was and the problem was that maybe it was being dealt with by a part of the ACT that knew about waste issues but did not actually know about industrial relations issues, which are different? Is it possible that we need to send this sort of information through different parts of the government?

Mr Jamie Winters: Someone could have actually spoken to us, but no-one came to speak to us at all. They would drop in for five minutes and then take off before we started asking difficult questions.

Mr Justin Winters: Who is responsible for the tender process for the Mugga Lane tip? We were given the contract and at that stage no-one had ever been paid super.

Mr Jamie Winters: In the company, and the creditors' report shows that the company was insolvent at the time, which is one of the reasons why we assumed we

were not getting—

MR SMYTH: Sorry, when they received the contract?

Mr Jamie Winters: When they received that contract, we had not received any superannuation. That is one of the reasons why we thought we were having a lot of trouble getting anything done, because they did not want this to come out. The creditors' report shows that in that year they lost \$330,000. ATO are owed a heap of money. So they were insolvent at the time. If that came out, we thought this was the reason why we were not getting the response we would like.

THE CHAIR: So on the basis of that contract, it would appear you should not have been—

Mr Jamie Winters: Yes. I was working up there, and the men were working. You are working with all of these toxic and hazardous materials. The principal contractor and Aussie Junk were allowed to do a deal which was financially beneficial to both parties. They provide the men for the pit and forgo the rent on the shed at the expense of the workers in the pit who are being exploited—who were paid \$50 a day. These men are from a men's refuge in Ainslie. I worked with them directly. Thiess were aware of it and on occasions requested that certain people be removed because there were obvious drug and alcohol problems. The men went through the pills, they would eat food out of the pit, they would go through the alcohol.

On one occasion a Thiess worker, whose name is Mick, fell down a compactor, injuring both legs. Laurie Hovey, who worked for Aussie Junk at the time, ran across and hit the emergency cut-off switch. That is the kind of position that these workers find themselves in. Would you want to be working amongst machinery and in an area where there is danger, with someone who has just sculled half a bottle of vodka that he has found in the pit? I do not think so.

THE CHAIR: Was the ACT government aware of those men from a refuge working there for \$50 a day?

Mr Jamie Winters: Not initially, but later in the process, yes, I made them aware.

THE CHAIR: Presumably there would have been some normal OH&S training requirements for staff?

Mr Jamie Winters: Everyone filled in induction forms.

THE CHAIR: Including those gentlemen?

Mr Jamie Winters: Including those men—and it was signed by Thiess. And including me. I was not there for the reasons that these people were there. And they employed these people because they did not question their entitlements; they question how to get through the day, these guys. We all filled in induction forms, signed by Thiess, signed by Aussie Junk. I requested a copy of mine and I was told it had been lost and they offered to backdate one for me, which I declined.

Mr Justin Winters: Everybody who had to work in the pit had to fill in one of these induction forms.

Mr Jamie Winters: One of the guys there, Hamish, a nice bloke, was up there with his dog. His dog's name is Gypsy. He was sitting on the side of the pit, cooking up bacon that he had just found in the pit, cooking it on a camp stove. They were aware of it but they did not care because financially they were saving at least \$50,000 by not having to provide the men.

MR SMYTH: You mentioned in your submission or you asked the question: "Will the government enforce section 8.6 of the Thiess contract?" What is section 8.6?

Mr Jamie Winters: That relates to the Mugga Lane contract. They filled in an ethical suppliers declaration. I am not sure if that is site specific because when the Mitchell contract was done it was pre ethical suppliers. They had a quality assurance program and all sorts of other things. But we were at the creditors meeting and we voted to put Aussie Junk into liquidation. Chris Ware was part of that meeting, on the telephone. As soon as that was done, Aussie Junk was no longer an approved subcontractor. Thiess had already provided Mr Richter with a termination letter dated the 11th, but because he was put into liquidation, approval was revoked on the 4th, I think it was. Both contracts were terminated simultaneously. So under the contract, if the territory revokes their approval as a subcontractor, they are still liable for any omissions by their subcontractor as if they were still approved. I do have the Thiess contract here; I just cannot find it at the moment.

MR SMYTH: When the government became aware of the concerns that you had raised, are you aware of what action they took?

Mr Jamie Winters: All they did was request that audits be conducted. That is all that was done.

THE CHAIR: So if Aussie Junk had not gone into liquidation, what would have happened?

Mr Jamie Winters: Sorry?

THE CHAIR: Aussie Junk went into liquidation and that was the end of the game. If that had not happened, would the situation have just continued as far as—

Mr Jamie Winters: If it had been fixed up at that first audit report that KPMG did—the fact is that it took another 12 to 18 months just to let the underpayments accrue, because he paid \$50,000 backpay to a previous employee, which were the same issues that we raised previously, only a couple of weeks before we were sacked. I raised these issues with Howard Cranfield on the day we were sacked. I said: "Are you aware that the workplace ombudsman has proceedings against this company? Are you aware he acknowledged breaches only yesterday? Are you aware that a former employee—he paid him \$50,000?" The head of HR told him not to answer those questions.

He stated to me—and Dean Logan's letter says the same thing—"You've been talking

to everyone and now ministers are involved.” So it does not take much. We had raised allegations—they were not allegations; we had proof—that they were dumping paint down the hole, they were crushing the fridges and air conditioners, releasing CFCs and HCFCs directly into the atmosphere. That is in breach of the Environment Protection Act, and we had raised these allegations.

At one stage Chris Horsey came to us and showed interest in giving us the contract directly. He said: “We’re taking the running of this off Thiess. We’re putting our own people in. Now is a good time to show us what you can do.” Thiess got wind of this and they thought, “Oh no, we don’t want these guys anywhere near this.”

There was an allocation for paints to be dropped off, which was just outside the weighbridge. The guys in the weighbridge know exactly what is going on, but they have their own interests to protect. They probably will not want to make a statement. But every morning, or whenever it was full, the bobcat driver would come along, they would fill the bucket up to the top and tip it straight down the compactor, and it goes to landfill.

My uncle was a bobcat driver for Thiess at one time. They did not know he was my uncle when he was employed. That was company policy; that is what they did. If you check the records, all the paint is supposed to go to Mugga Lane, transported across. If you check the records from after we made this an issue, after we were sacked in about August, when it was on the news about allegations of dumping paint down the hole, there was the volume of paint that went over to Mugga from that point. Then in March 2009 they set up a contract to get rid of it. Where did it go previously? There should be records that show it was not sent over there. It never did; it went down the hole.

I could go on for hours. We have got a lot of information and we have had no luck with anyone. We had no forum to talk to anyone and get it out to them.

MR SMYTH: With respect to Mr Logan, on behalf of Mr Seselja, what was the outcome of that process?

Mr Jamie Winters: He rang us up. I have it here. He said:

This confirms a discussion I had with Howard Cranfield from Thiess management Sydney with regard to the issues associated with Jamie Winters and his colleagues. It was made clear to me by Mr Cranfield that Thiess management were heading to Queensland on 18 July to discuss the issue with Aussie Junk management. Thiess management would also be heading to Canberra early the following week to talk to the ACT Government and sack also four troublemakers. Mr Cranfield is extremely angry and more concerned that the ACT Minister is now involved.

He has handed over a copy of the actual notes he took while he was having that discussion. It states:

Talked to Chris Horsey of ACT NOWaste. On Friday tough decisions will be made. ACT NOWaste rang.

The last four items state: “Talked to ACT Monday and Tuesday”. We were sacked on the Wednesday, I think it was. “Kay Hewitt; judicial inquiry asking; dumping paint down the hole; drinking with machines.” So for Mr Cranfield to make those statements, he was aware of it. At the time Kay Hewitt was asking for a judicial inquiry—snakes in the grass, all sorts of stuff. So he was aware of what the issues were and that is more of an issue to ACT NOWaste than to Thiess. The fact is that he was aware of it—he had been talking to ACT NOWaste.

MR SMYTH: So from the point of view of an inquiry into procurement, as far as you are concerned, there was nobody ensuring that the conditions of the contracts were being met?

Mr Jamie Winters: That is right.

Mr Justin Winters: It is almost two years ago now.

THE CHAIR: Yes, and you gave evidence to the government suggesting that the commission’s conditions were not being met?

Mr Jamie Winters: Yes. We had no safety equipment. You would find a second-hand pair of gloves and boots in the pit; that was it. You were working with lead, cadmium, arsenic, mercury, syringes, pharmaceutical waste, household chemicals, builders’ rubble, including asbestos. And no-one cared.

MR SMYTH: Just for the sake of the hearing, your concerns were raised with Aussie Junk and nothing happened?

Mr Jamie Winters: Yes.

MR SMYTH: They were raised with NOWaste and it made no difference?

Mr Jamie Winters: The environmental concerns were raised a little bit later. I would say to Chris Horsey: “Nickel cadmium batteries shouldn’t go into landfill. You need to provide these services. It’s all going to landfill.” He said, “We’re looking at implementing our own system.” I said: “I can do it now. I will build the bins and do it myself.” “No, we’re looking at implementing our own system.” In the course of those conversations I mentioned the paint and all these other issues we had concerning the site, and he said, “It will be looked into.”

MR SMYTH: So are those bins in place now?

Mr Jamie Winters: Not all of them that I suggested, no. Mercury bogs came not long afterwards.

MR SMYTH: So Aussie Junk, NOWaste; you talked to Thiess and nothing happened?

Mr Jamie Winters: Yes, they had no interest.

MR SMYTH: And when you talked to the government direct, nothing happened?

Mr Jamie Winters: As direct as I could, yes. I certainly emailed everyone.

THE CHAIR: Thank you very much, Mr Winters. The rights or wrongs of particular procurement activity are not something which the committee can really arbitrate on because that is not our role. We are not part of executive government. What you said is very worrying. It suggests there are significant issues. We will consider privately what, if any, suggestions we can make for any further resolution. Thank you very much for your evidence. We will certainly consider it. If you could provide copies—

Mr Jamie Winters: I made one for Mr Hargreaves but he did not—

THE CHAIR: He felt, quite reasonably, that he had a conflict of interest issue here and that he would not take part in this part of the inquiry.

Mr Jamie Winters: There is no civil action pending or anything like that. I was surprised he did not want to take the opportunity to talk. It would have been the first time.

GRAY, MS LOUISE, ACT Manager, National Disability Services

THE CHAIR: We will resume this hearing of the public accounts committee into procurement in the ACT. I need to ask you, Ms Gray, whether you are aware of the privilege statement and you are happy to abide by the information in that?

Ms Gray: Yes.

THE CHAIR: Do you have an opening statement to make?

Ms Gray: Yes, if I may. National Disability Services is the peak body for disability service providers in the community and we welcome the opportunity to provide input to this process. We welcome the opportunity to engage with government and the opposition on all matters relating to disability service provision and believe that government procurement is a pivotal issue to the ongoing sustainability of the sector. Thank you very much for accepting our submission and also for giving me the time to come along today.

THE CHAIR: Thank you. One of the issues you raise here is the cost of engaging in the tender processes. Could you talk a bit more about that? How much does it cost? Do we end up with it costing a substantial proportion of the actual amount of the tender?

Ms Gray: A big part of what is driving the cost is the way in which the workload is managed, and that links directly to how tender processes are released and the timing of those processes. So it is a matter of when they occur in the year, whether they hit periods of peak workload for disability service providers and how many are issued in close succession.

As an example, five tender processes have been issued in recent months and they have placed significant pressure on community organisations to respond. Those tender processes included a panel of case management service providers for people with high and complex needs, advertised on 6 February; a panel of providers for future planning for people with disabilities, their families and carers, also advertised on 6 February; a panel of community service providers for individual support packages, also advertised on 6 February; health and community care growth funding, advertised in February, to close in March; and accommodation support services, also advertised on 6 February.

Because so many disability service providers rely on a series of funding streams for their income, the need to provide five different tender responses was a significant workload for many service providers.

One particular organisation asked me to note that in some cases the service provider might share a staff member who does the strategic and financial planning with another organisation. They do not necessarily have the ongoing capacity on a full-time basis to invest in this really important role. So they find themselves struggling to meet the need. I think it would depend on a case-by-case basis as to how much cost in financial terms there is, but it is safe to say that in the case of these five tender processes that did take up the full-time workload of quite a few staff members over a series of weeks.

MR HARGREAVES: Ms Gray, those dates that you gave us, were they just for ACT tenders or were they for commonwealth tenders and ACT tenders?

Ms Gray: ACT only.

MR HARGREAVES: Can you give us an indication of the implication if the commonwealth did the same thing? I have a feeling that they have a similar sort of story. Do they have the same sort of time lines as the ACT does and therefore is the information you are giving us only half the story?

Ms Gray: It is true that disability service providers in Canberra also receive commonwealth funding. I am not aware of how many requests or approaches to market have been made by the commonwealth in recent times, but I would say you are correct; it is part of the story. So they are also meeting FaHCSIA requirements or Health and Ageing requirements to get funding.

THE CHAIR: Is the reason for the timing, to the best of your knowledge, possibly related to the budget cycle? There must be some reason why all of the five tenders were at much the same time. Is this the timing so that the organisations get the tender in place for the next financial year? Do you have any idea as to why it is happening?

Ms Gray: I do not know. From my understanding, this is a surprise to the sector. So it was seen as unusual amongst service providers. National Disability Services and ACT Procurement Solutions had an information session for disability service providers to educate them a bit about the government process to make sure they would be able to tender more effectively.

MR SMYTH: That was the meeting on 4 March this year?

Ms Gray: Yes. As part of that process, the concerns about the timing were raised. At that time there was some indication that Procurement Solutions and Disability ACT had not necessarily been fully communicating the reasons why there was this flurry of activity.

MR SMYTH: When did those five tenders that you mentioned actually close?

Ms Gray: Three of them close on 13 April, so they are still open. One closed on 30 March and one closed on 23 March.

THE CHAIR: In the capital works area—and Brendan will correct me if I have got it wrong—the government issues a forward program as to when it expects tenders to be let for capital works. Would something like that be beneficial to your sector?

Ms Gray: I think so.

THE CHAIR: It does seem very amazing to have five—

Ms Gray: I think it would be very useful. Also, it is worth noting that, in relation to the HACC procurement process, HACC tend to organise information sessions to alert

providers that these things are coming up and to assist them in understanding what is coming up, what is going to be required and when. If that could be implemented across government, that would be extremely useful. So there could be a similar process for DHCS, perhaps.

MR HARGREAVES: Part of the problem, as I understand it—I am interested to know how it affects your sector, too—is that we have three types of activities that impact on the sector. One of them is the amount of ACT or territorial initiatives which come out of the ACT budget, another one involves directly commonwealth ones, quite specific, and there may not be any nexus between the two. And then there is the middle bit where the ACT becomes a post office for the commonwealth, where they give them the money or give them projects. So they hand it over to the state or territory and then it kicks in. The problem about predictability for the sector is that you do not know for at least two of those.

Ms Gray: Yes. I think it would be extremely useful to get those links between federal and state-territory governments as well in terms of planning and information.

MR HARGREAVES: Is this a matter that you might like to consider, from your national perspective—dropping a letter or a submission, for consideration only, to the disability ministers council?

Ms Gray: Yes, that is definitely something we could do. It is something we have been discussing at state manager level, but the disability ministers council is a good opportunity—

MR HARGREAVES: Gratuitously, it seems to me that the bit you are telling us about here with respect to the disability sector is going to be mirrored in the other jurisdictions, certainly—maybe even worse. I do know that in Victoria, for example, a lot of the city councils distribute funds and organise programs with the disability sector. Manningham City Council is one that comes to mind. So you have got four—

Ms Gray: That is right.

MR HARGREAVES: funding sources, plus the private sector funding. So it must be a nightmare.

Ms Gray: That is right. Of course, we also have organisations such as the regional community services who do disability support work, amongst other things, so they have funding streams relating to their work on disability services and funding streams relating to their work on aged care or child care or family services. So it is a lot of streams of revenue to manage.

MR SMYTH: On the second page of your submission, at the first dot point at the end, it talks about requests for tender not being issued during periods of peak workload. When does the disability sector not have a peak workload period?

Ms Gray: Perhaps there are slightly less challenging times than, for example, when people are engaged in post-school planning, for those organisations that deal with young people with a disability coming out of school, or perhaps, when considering

any assessments against quality standards or reconciliation of recurrent funding, making sure there is no butting up against the various processes that we are required to meet.

MR SMYTH: Is the government aware, or have you made the government aware, of when the best periods are?

Ms Gray: When I submitted this document I provided it to the department as well and I have had discussions with them since the 4 March seminar as well.

MR HARGREAVES: In terms of the procurement process, how willing do you find the government or the department in assisting your organisations, particularly the smaller ones, in working their way through the complicated maze of the procurement process?

Ms Gray: I think part of it would come down to availability of staff to assist organisations. I think that the will is probably there, but in practice it may not necessarily eventuate. I have been advised by several members that they have had queries with the department that have been unanswered for some time. But I understand from Procurement Solutions that they are required to respond within two days and, if necessary, adjust the deadline for submission. So the fact that there were delays in responses to questions indicates that the capacity may not be there to provide the hands-on support that is needed.

MR SMYTH: You make that exact point in the second-last paragraph on page 2. You say in your second sentence: “An extension in the deadline for submissions has not, in these cases, been offered.”

Ms Gray: That was my understanding.

MR SMYTH: Did that adversely affect the organisations?

Ms Gray: In that case I believe the tenders are still open, so we have requested that an extension be provided. We will follow that up.

MR SMYTH: You are awaiting a decision?

Ms Gray: Yes.

MR SMYTH: Is that a regular occurrence or is it just something that has been brought to your attention recently?

Ms Gray: It has just been brought to my attention recently. As I said, I think this is the first time there has been such a lot of activity, and also a degree of confusion. For example, the panel of community service providers for individual support packages is to establish a panel of pre-qualified providers, I understand, and organisations that already provide services to recipients of ISPs were confused as to whether they needed to apply or not. So the degree of confusion amongst potential applicants is perhaps greater in the case of those types of processes.

MR HARGREAVES: With the contracts that your organisation has received to provide services to people with ISPs and the like, do you feel that the length of time that those contracts cover is adequate, insufficient or sufficient? Do you think that it should be a longer period or a shorter period?

Ms Gray: It really depends on the nature of the funding that is going in. With recurrent funding, which is a separate issue, recurrent funding should be subject to your three years standard review, although there is something to be said for a greater ability to plan strategically if you have a longer period. But with ISPs, the difficulty is that within the current framework you can receive a grant for an individual one that goes for over a year, and others that are ongoing. So it is hard to say what single review point would be appropriate.

MR HARGREAVES: Isn't it true, with respect to the difference in terms of human services for contracts, that the difference between disability clients and others is that we have got them not for Christmas but for life? In fact, when somebody comes on, that set of services is going to be provided in an increasing level throughout their lifetime rather than what happens in the general health sphere, where you can get something and then get cured or you get over it or you do some rehab and it is all right. But that is not the case with people with disability. I am concerned, and have been for some years, that the contracts that go out to support people with disabilities are time-limited, when the client is not and the connection between the government and the client is not; it is going to go on for 20, 30, 40 or 50 years. Doesn't it make a bit of sense to have a longer contract for that?

Ms Gray: I think that the needs that people have do change quite significantly throughout their lives, and it is important to give them the opportunity to have review points as well. I guess your question makes me wonder about the whole discussion about whether there should be a finite pool of funding for disability services or whether it should be an entitlement. I guess I would see the two questions as linked.

MR HARGREAVES: Do you find that, because the governmental approach to funding disability services through their procurement processes is not subject to the same growth funding that health has, that means a shrinking down of the level of service that the organisations can deliver to their people?

Ms Gray: Yes, I think that the insufficient funding, particularly around the growth to match what we know is the growth in need, is a real problem.

THE CHAIR: Another witness gave evidence about when you should have a grant and when there should be a tender. Do you have any views as to when it is appropriate to have grant processes and when it is appropriate to have tender processes?

Ms Gray: I think it is useful to have access to both. Grants, in my experience, should be more of a one-off nature, whereas the tender process should relate to ongoing procurement or procurement where you have a better sense of market forces. I think grants tend to be more appropriate for pilot programs and programs which relate to more tangible purchases than ongoing service provision.

MR HARGREAVES: In terms of the change from the purchaser-provider model to

the current model, I think it was felt that up to 15 per cent, and sometimes 20 per cent, of the grant to community organisations was taken up in the administration part of it, and giving reports which no-one ever looked at, and the change from that system was supposed to put those funds into the sector itself, into the sharp end. Do you have a sense that that has actually happened, or is it easier or worse? Is there no change in the sector?

Ms Gray: I think the issue of red tape continues to be a problem. One of the big concerns around ISPs is the need for the detailed reporting on a six-monthly basis at the individual level that services have to be involved in, and families, and the individuals, if they are capable. So, no, I do not think that we have honed down that problem yet.

THE CHAIR: Have you any suggestions for honing it down?

Ms Gray: I think simplifying across government would be extremely useful. I think linking between departments that deal with the same agencies would be beneficial. If we could take models that we see working or that we see as relevant in one jurisdiction and applying them across would be beneficial. So where we see a model that is effective in relation to quality service standards, perhaps at the national level, we could develop something at the territory level that mirrors that and allows for a single reporting line rather than duplicating, but with just enough difference to have to require a degree of extra work.

I also think it would be useful—and I am not sure if now is the appropriate time to mention it but I will—and beneficial if we could build into government tendering a commitment to the corporate social responsibility that government has to support disability. There are a lot of Australian disability enterprises out there that provide valuable services, and that can respond to government procurement processes. In Canberra, we have LEAD and Koomarri providing a range of services. At a national level, the federal government and several states have decided to amend their procurement guidelines to allow for people in government purchasing from ADEs to be exempt from the tender process.

This encourages the federal government to consider ADEs more extensively, and perhaps purchase from them more extensively. I believe that, in the ACT, if we could have something that encourages government to purchase from ADEs we would see greater opportunities for those local ADEs to grow and to offer business opportunities for people with disabilities.

MR SMYTH: Sorry, just for the record, what does “ADE” stand for?

Ms Gray: Australian disability enterprises.

MR SMYTH: You mention in the last paragraph of your submission the use of pre-qualified panels. It follows on from the suggestion that you have an expression of interest step. How often are pre-qualified panels used in disability tendering?

Ms Gray: I am not sure. I would not be able to answer that.

MR SMYTH: In the ACT?

Ms Gray: As I understand it, the three that were recently advertised are new panels.

MR SMYTH: Is that something that your organisation would be in favour of?

Ms Gray: Yes. Effectively it reduces the long-term impost on organisations because they have gone through that process once.

MR HARGREAVES: In terms of the procurement processes and attitudes generally, do you find that there is a different attitude between the departments? For example, Territory and Municipal Services have contracts out, I think with Koomarri and LEAD, to do some horticultural work. DHCS, of course, have stacks of it; Health have a few. Do you find that you get the same approach to the procurement processes and to the attitudes in each of those departments or does it vary across the system?

Ms Gray: I think it varies across the system. It is not something I have been directly exposed to but I have heard that there is a difference in the degree.

MR HARGREAVES: Do I take it that you would support a whole-of-government approach to tendering processes around disability services?

Ms Gray: Indeed.

MR HARGREAVES: I thought that was what you were saying.

THE CHAIR: Thank you very much for your evidence, Ms Gray. I now close this public hearing of the public accounts committee into government procurement.

The committee adjourned at 11.30 am.