LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS AND ADMINISTRATION

(Reference: Inquiry into the Secure Local Jobs Code)

Members:

MR J MILLIGAN (Chair)
MS F CARRICK (Deputy Chair)
MS Y BERRY
MS J CLAY

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 2 NOVEMBER 2026

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Secretary to the committee:
Ms S Milne (Ph: 6205 0435)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 8.31 am

SHARKEY, MS STACEY, Assistant Secretary, Australian Services Union

THE CHAIR: Good morning and welcome to the public hearings of the Standing Committee on Public Accounts and Administration for its inquiry into the Secure Local Jobs Code. The committee will today hear from representatives from a range of unions, community organisations and industry representatives. The committee will also hear from the Minister for Finance.

The committee wishes to acknowledge the traditional custodians of the land which we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution that they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

This hearing is a legal proceeding of the Assembly and has the same standing and proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the Assembly. The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web-streamed live. When taking the question on notice, it will be useful if witnesses use the words "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We welcome Stacey Sharkey, from the Australian Services Union NSW and ACT (Services) Branch via video link. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated a serious manner and may be considered contempt of the Assembly.

We will go straight into questions. What demonstrated cases of workplace harm in code certified ACT community service providers were detected or prevented specifically by the code, rather than by Fair Work or existing funding audits?

Ms Sharkey: Thank you so much for having me here with you today. I do not have any exact examples with me today to solidify that question. However, I will just give the example that it is a lever and a tool within a toolkit. Given that the community services sector is almost wholly reliant on government funding, the code gives additional accountability and an additional lever for us to utilise to make sure that the workplace rights of our members and the workers across the community sector are being upheld.

THE CHAIR: In your submission, you acknowledged that the number of certificates issued and audits undertaken do not establish whether employment has actually become more secure. Can you elaborate on that?

Ms Sharkey: Yes. A secure job is also secure within its employment and also within its safety standards within the workplace. The code gives us the additional consultation obligations of the organisations themselves. We also recognise that there have been submissions put in around the administrative burden or around funding cycles. We can

confirm that we agree with the sector on that. We do not agree that there should be less accountability just because it is a not-for-profit sector.

THE CHAIR: Are you able to point the committee to any measurable improvements in employment security that can be directly attributed to the code since its introduction?

Ms Sharkey: Like I said, we can utilise the code as an additional lever when we are organising around workplace health and safety and, especially within the community sector, psychosocial safety. Our members work in domestic violence services, they work with people living with disability and they work with the really vulnerable community in Canberra. This allows us to have additional internal dispute mechanisms to utilise to alleviate any of those concerns within the workplace, rather than having to escalate externally outside of the workplace.

THE CHAIR: Thank you.

MS CARRICK: When we talk about secure jobs, often what we hear from our community sector is the fact that we have a very late budget and that it creates uncertainty about funding and, due to that uncertainty, community organisations lose staff to go and get something that is a bit more secure. When we talk about secure jobs, could the ACT government actually help with creating a bit more certainty around the jobs in the community sector in Canberra?

Ms Sharkey: Yes, absolutely. Retention and recruitment is an issue within the community services in Canberra. Our members experience, as we have said, psychosocial risks at work. It is a really hard job and there is a lot of burnout, and there is no surge workforce just waiting to come into rape crisis centres or domestic violence crisis centres. Some of the mechanisms that could be utilised by government include longer-term funding cycles, which I know others in this sector have alluded to in their submissions as well. The New South Wales government has just implemented it in more recent tender processes, which we are seeing having a more secure workforce because there is more secure funding. That is one mechanism that we could recommend.

MS CARRICK: The community sector say that, when it comes to putting in for contracts that the Secure Local Jobs Code—and, I think, potentially, a range of things—make it easier for the bigger end of town and the national community organisations to put in a more polished professional bid than our local small community organisations, and some of our local small ones feel like they are missing out to the more polished submissions for a procurement. Do you have a view on that?

Ms Sharkey: I had it in my opening statement, which I am happy to send through after this, that the administrative costs, or the time that it takes to uphold the Secure Local Jobs Code, and also throughout tender processes, should be funded from government for government-funded services. We absolutely agree with the sector that there should be longer-term and more stable funding, which should include things that you have just spoken about and the administrative burden and costs around the Secure Local Jobs Code. What we disagree with the sector on is less accountability through either removing community services from the Secure Local Jobs Code or not strengthening the code through this process.

MS CARRICK: In the submissions from the community sector they say that they are already regulated. Why is it that they think they are already regulated but you think that they still need the Secure Local Jobs Code? Where is the disconnect there?

Ms Sharkey: I cannot specify what they are stipulating in their submissions, but what I can say is that obviously we do have Fair Work mechanisms, SafeWork and work health and safety requirements. The difference with the Secure Local Jobs Code is that it is about accountability to public funding and to government funding. The community services sector in the ACT is wholly reliant on government funding. I think, through CSD, it is $250 million a year or something along those lines. So it is not a small amount of money. The Secure Local Jobs Code's benefit is that there are additional mechanisms and requirements for government funding. But I cannot really speak to the specifics of those submissions.

MS CARRICK: No worries. I do have one more question, but I may come back to that.

MS CLAY: Stacey, thanks for coming in. The Greens engaged in budget negotiations with the government this year and we got a significant uplift in community sector funding. But I would say that it is a common theme across all the submissions from the community sector that the best way to have a stable workforce and good conditions for workers is increased funding. Do you think that is probably one of the most important things government could do to improve conditions for workers in the community sector?

Ms Sharkey: Yes, absolutely, and we have put that in our submission. We would also agree with YWCA, ACTCOSS and other submissions from leaders across the sector as well. Absolutely, funding within the community sector needs to be uplifted and to be adequate. Potentially, through this process, there could be mechanisms within the Secure Local Jobs Code to rectify that situation as well as those longer-term funding cycles that I spoke through earlier, which we have seen New South Wales government recently implement. It is making a difference within the sector and the retention and recruitment of staff.

MS CLAY: That is great. Indexation has always been a point of contention where, if the funding is inadequate or adequate, the community sector has often said the indexation is massively inadequate and does not keep pace with wage price inflation, which is the primary cost of the sector—also noting that everybody has submitted that they actually need government funding in order to respond to the Secure Local Jobs Code administration. Do you think an index that is pinned to wage prices and also accounts for the administration of getting government funding would help?

Ms Sharkey: Yes, absolutely. The ACT government have an indexation formula for the community sector, which is fantastic, but it has not been keeping up with the Fair Work increases and the superannuation increases. So, yes, adequate uplift in the indexation, absolutely—which could include indexation for the cost of the Secure Local Jobs Code and other mechanisms that the sector has to uphold.

MS CLAY: I think the indexation is less than the horseracing industry gets on their funding. So that certainly does not look like it is the right amount to me. We have had a number of community sector submissions and also other smaller organisations say

that they should be exempt from the Secure Local Jobs Code. A lot of the same submitters have also said, "If we cannot be exempt, can we please have a simpler pathway that is more appropriate?" I would imagine that is probably something that would apply to the smaller community sector organisations rather than the larger ones. A really large organisation might need to comply with the full thing. But do you have any views on whether there might be a simpler administrative pathway or different types of ways that you can get a Secure Local Jobs Code certificate or comply with the code if you are an organisation of four versus if you are an organisation of 500?

Ms Sharkey: There is such a discrepancy within the community sector for the smaller orgs and the larger orgs around the funding that they receive. We agree—and it was in our submission—that there should be less of an admin burden for smaller local community services. We agree with the sector that a simpler pathway could be a way through this. We work with this sector very well—we come from the sector—but, in this instance, we do not agree with community services being removed from the Local Jobs Code. But we can agree with a simpler pathway and also the admin costs being covered through some form of indexation. Like I mentioned earlier, the community service sector is wholly reliant on government funding. It gets a lot of public money, as it should, and so it should also then be held to the same standards as other sectors that also get public money.

MS CLAY: Do you have any ideas on what the features of a simpler pathway might be for smaller players?

Ms Sharkey: I do not have anything here with me today, but I am happy to take that question on notice.

MS CLAY: Stacey, if you have any thoughts later and have time, send it in but, if you do not, you do not need to.

MS BERRY: Stacey, could you briefly describe the services that you represent here in the ACT—like the workforces?

Ms Sharkey: Our members do such important and vital work across the community services, and we know that is quite a blanket umbrella term. The services that our members work within is alcohol and other drugs, mental health support services, rape crisis centres, domestic violence services, child protection services and financial counselling. It is such a broad sector and it is such important work. As we have stipulated in our submission, that is another reason that there should absolutely be accountability for the money that goes to these services. Secure local healthy jobs within these services support everyone in Canberra's community, our members doing the work and also those vulnerable Canberra community members that utilise the services themselves.

MS BERRY: Do you cover disability support workers as well?

Ms Sharkey: We do indeed. Due to the fact that it is a lot of NDIS funding, not that many are on the Secure Local Jobs Code. But, yes, we absolutely do support disability support workers as well.

MS BERRY: Often there is a perception, I guess, in the community that not-for-profit organisations are not underpaying people or stealing wages, but those sorts of circumstances do occur within those jobs. Is that your experience?

Ms Sharkey: Yes, it can. It is certainly not exempt from wage theft, just like any other sector.

MS BERRY: Do you think that, if an employer has a history of underpaying or there are records that show that an organisation might be underpaying their workforce or doing something that is in breach of the Fair Work Act, that should be held in high regard with the Secure Local Jobs Code for community services as well?

Ms Sharkey: Yes, absolutely, and that was in our submission as well. There should be consequences for noncompliance and, absolutely, that should extend to wage theft.

MS BERRY: And, I guess, work health and safety issues as well.

Ms Sharkey: Yes. Like I mentioned earlier, having the Secure Local Jobs Code Registrar as an additional tool and as an additional lever has been useful to resolve work health and safety disputes within the workplace, which is always the best way to go about that, especially within the community services sector, where reputation is so important for community members to feel comfortable accessing the services. So, yes, absolutely.

MS BERRY: Thanks, Stacey.

MS CARRICK: Do you think that the registrar has enough powers to do the job, or have you found in your sector that it the registrar should have more powers?

Ms Sharkey: We did mention this in our submission as well. It definitely should be looked at through this process. We recommended that there are more robust powers for the registrar on the other side of this.

MS CARRICK: Have you had any issues with that aspect of the registrar?

Ms Sharkey: No, we have not.

MS CARRICK: Thank you.

MS CLAY: Stacey, is there anything we have not covered that you wanted to tell us?

Ms Sharkey: I think the questions have covered most of what I was going to say in my opening statement. I am also happy to send it through, though, just for everyone to have, after this meeting.

MS CLAY: Chair, do you want Stacey to table her opening statement?

THE CHAIR: Yes, that would be useful for the committee. That would be great; thank you.

Ms Sharkey: Wonderful.

MS CARRICK: Do you think, Stacey, that there is confusion about what the objective of the code is, whether it be local jobs or secure jobs? I find that people think it is local jobs, but it is not really. Is there confusion about the objective of it?

Ms Sharkey: I guess I would say that there could be more education done, especially with workers, around what the secure Local Jobs Code entails. Also, a secure and local job can mean the same thing but two separate things. Having secure jobs within the community services sector is so important, as we have discussed around keeping those respected and maintained relationships within the services and also having local Canberra workers within those workplaces. I see it as probably two different things but within the same meaning of what the code should represent.

THE CHAIR: Excellent. On behalf of the committee, thank you, Ms Sharkey, for attending today's hearing. I have noticed that you have taken the question on notice. If you are able to provide your answer to the committee secretary within five business days from receiving the uncorrected proof, that would be useful. Also, if you are able to table your opening statement, that would be most beneficial as well.

Ms Sharkey: Great. Thank you so much.

CRESSHULL, MS ERRYN, ACT Branch Secretary, United Workers Union
JOE, MR JOHNSON MOE, Worksite Delegate, United Workers Union
MANEESIRAWONG, MR JIM, Organiser, United Workers Union
MISTRI, MR MEHULKUMAR (Mehul), Member, United Workers Union

THE CHAIR: We welcome representatives of the United Workers Union. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. As there is no opening statement, we will go straight to questions. Are you able to identify post-2019 cases in which the code independently detected and remedied worker exploitation that existing workplace regulations or a strengthened government contract could not address?

Ms Cresshull: We might have to take that one on notice, and we will give that to you as soon as possible.

THE CHAIR: In your submission, you claim that tendering has remained as robust as it was before the code commenced and that certification requirements have not been a barrier to participation. What evidence do you have to make those claims?

Ms Cresshull: The contract system continues to churn. It has not changed at all since the code came in. Certificates get issued and contracts get issued. There is no real difference there.

THE CHAIR: Have you examined how many businesses, if any, have stopped tendering for government work or elected not to seek certification because of the code?

Ms Cresshull: No.

THE CHAIR: Have you concluded that the code has not been a barrier to participation?

Ms Cresshull: We have concluded it has not been a barrier, because contracts still continue to get issued for ACT government work in our areas.

THE CHAIR: I will come back shortly. Ms Carrick?

MS CARRICK: Can you tell me whether, in your view, the Secure Local Jobs Code is achieving its intended objectives? What are your views about the objectives and people being confused about local workers, as opposed to secure jobs. I notice your first recommendation mentions the impact on local workers.

Ms Cresshull: We think the code is doing a good job. Before the code came in, we saw many, many cases of exploitation within the industries we represent, particularly with the Local Jobs Code with cleaning and security. They are service-heavy jobs, the contract churn is high and the first things that get cut are wages and conditions. The people that work in our industries tend to be immigrant workers, with possibly less understanding of what their rights are, which leaves them open for exploitation by unscrupulous contractors—and, unfortunately, there are many of them.

Prior to the code coming in, we saw really terrible exploitation of our members, and I think Jim and Moe Joe can absolutely attest to that, working for a company, Phillips Cleaning—that was one of the names of the company—that was contracted in ACT schools. Since the code has come in, we have not had to have those outrageous battles with those companies, who clearly sought to deliberately undercut our members' rights. So, from our perspective, it is achieving its objectives; it is working. If you would like to hear from our members, they would be very happy to talk to you about the industries they work in and their experiences.

MS CARRICK: Noting we have only got 20 minutes, and we want to get the main points out.

Ms Cresshull: Yes. With the local component, I do understand that there has been some confusion that has been documented about what "secure" and what "local" means for workers in Canberra. We need to make sure that they are treated properly and that they have secure employment that is good employment and they are not being exploited. For us, it is about our members in Canberra and the work that they do.

MS CARRICK: Have you had any issues with bigger firms and national firms winning the contracts, as opposed to smaller local firms, because they just have the resources to put in better bids?

Ms Cresshull: Not that we know of. I suppose there is a thing where some bigger firms have better capacity with HR or better IR procedures in place already. So it may be easier for those firms to apply for contracts. But that certainly does not cut out any other firm.

MS CARRICK: Do you think the registrar's powers and responsibilities are sufficiently understood in your sector?

Ms Cresshull: Probably.

MS CARRICK: Okay. That's good.

MS CLAY: Moe Joe, Mehul and Jim, I would love to hear from each of you about which industry you work in. Moe Joe, can you tell me what industry you work in?

Mr Joe: Before?

MS CLAY: Yes.

Mr Joe: I used to work with Phillips Cleaning service on contracts. During the school holidays, we did not have any job, so we could not get any money to pay rent.

MS CLAY: That is tough.

Mr Joe: Yes.

MS CLAY: Mehul?

Mr Mistri: I am working as a security officer.

MS CLAY: And Jim?

Mr Maneesirawong: I also worked with Moe Joe with Phillips Cleaning before. I could see that they took advantage of workers like us. We are basically from a migrant background, and we have been threatened by, "You do what I'm asking or you just leave and no work." Many of us who have a language barrier have not been able to ask or raise our voice or concern, because we are too scared to lose our job, and we think that jobs are hard for us to find with a language barrier.

MS CLAY: There were three examples in your submission. This was one of them: the cleaning company. It is okay if you do not know the answer to this next question. Since the Secure Local Jobs Code came in, there have also been improvements to the Fair Work legislation. Do you think that some of those improvements to the legislation have also helped with rights? I do not know if that is one for you, Erryn.

Ms Cresshull: It is a really tricky question, because the industries our members work in are so exploitative and we constantly pick up problems. If an employer is a bad employer, they will find ways to ignore anything. The thing about the Secure Local Jobs Code is that it is here in Canberra, and we do expect that our taxpayers' money is not given to shonky operators. The Fair Work Act sits there. We recover millions of dollars for our members across Australia every year because of shonky employers, but we do not want to see us trying to recover that money out of workers in Canberra who have taxpayers' money through government contracts. So, possibly yes and no, but I think in our industry it is more no.

MS CLAY: So there is a huge benefit in having that direct, accessible ACT Secure Local Jobs Code?

Ms Cresshull: Absolutely.

MS CLAY: We have had a number of submissions from community and non-profit organisations and also from small businesses who say, "For an organisation of two, three or four people, it is really hard to apply for the Secure Local Jobs certificate, and we should have a simpler administrative pathway than for an organisation of 100 or 1,000 people." Do you think keeping the Secure Local Jobs Code but having a simpler administrative pathway for organisations of a certain size or in a certain sector, if that is done well, is a good idea?

Ms Cresshull: It would really depend on what it looked like. We would not want to see any corners cut, because some of the smallest operators are some of the worst employers.

MS CLAY: This might be hard to think in the abstract, but are there any features that are really important in that administration pathway to make the protections? What would the protections need to be?

Ms Cresshull: We would really have to consider that, I think.

MS CLAY: Perhaps it is probably more a process question. If government were looking

at that, do you think if government developed that, would they need to do public consultation, consult with the unions and consult with the sectors affected? Would that be the right way to make sure it is well designed?

Ms Cresshull: Absolutely. We want our members' voices front and centre, because they are the ones that are the workers and the ones that would suffer should things go awry.

MS CLAY: Excellent. Also, it is an excellent submission. This is a really good submission. The $300,000 wage theft issue was quite key. That took quite a long time. That was successful, wasn't it? But the impact of that was still quite negative on the people affected.

Ms Cresshull: Moe Joe and Jim were affected by that. It was a very difficult path, particularly for a mainly refugee community.

MS CLAY: And then not everybody got their money and it took a long time to get the recovery of the wages.

Ms Cresshull: It was through the Federal Court. So that that takes a very long time.

MS CLAY: Difficult.

Ms Cresshull: I think the thing about the Secure Local Jobs Code is that it catches things before they happen. We do not want this to happen to our members again. We have a process where bad operators, hopefully, cannot get through. Otherwise, we are in a situation that we were with that Federal Court case with Lloyd Brown and our members. It was a terrible time. It was very, very difficult to recover those wages—and, also, just confidence in working in Australia. It was a terrible thing. They are not alone. Our industries are bad industries. We know this. But catching it first saves that pain.

MS CLAY: Did you have to find lawyers? Did you have to find and pay for lawyers? Is that something that the union did?

Ms Cresshull: It was through the union, yes.

MS CLAY: So the union had to fund that?

Ms Cresshull: Yes, through our members.

MS CLAY: So the union had to fund that at the outset, in order to recover the wages?

Ms Cresshull: Absolutely.

MS CLAY: Thank you.

MS BERRY: Thanks, everyone, for coming in. I should disclose that I am a member of the United Workers Union. I know Jimmy and Erryn quite well but have not discussed this hearing with anybody before today's date. Obviously, I am aware of the Philips Cleaning Services issue and the challenges within the cleaning industry. Having

the Secure Local Jobs Code catch bad players before they are engaged with the government is one thing, but what would be an ideal kind of check-in, through the Secure Local Jobs Code, if an employer does find their way around their requirements or their obligations under the code?

Ms Cresshull: I think it needs to have constant reporting throughout the contract period—and rigorous reporting, that is not just the company saying, "This is what we are doing and we are ticking all the boxes." It has to be real.

MS BERRY: How does the message get out to cleaning contractors that that is now a requirement—that they understand that there are better ways now to improve their work?

Ms Cresshull: I think the government has to say that to those contractors, and through the Local Jobs Code Registrar, when they go through the process at the beginning. Small businesses and companies running these types of outfits have many, many things that they have to do to make sure their company is financially viable and in line with all the other legislative requirements they have. We do not tend to buy that this is red tape that is so excessive that they cannot do it.

MS BERRY: I acknowledge, as Ms Clay has, the courage for your members to come in and tell your stories and your experiences and still having that fear that you may be targeted by unscrupulous contractors here in the ACT. How do we make sure through the Secure Local Jobs work that people can tell their stories and their experiences and that they can be protected with their union and by the government?

Ms Cresshull: It is a matter of engaging with workers through their unions, I think, and that does not always happen.

THE CHAIR: Just going back to the school cleaners case, they were able to pursue their entitlements through the Federal Court and through those laws. What additional protections does the code actually provide that could not be achieved through that normal process?

Ms Cresshull: The main thing is that there are checks at the beginning. So we do not necessarily have to go through the process. It is thousands and thousands of dollars of our members' money and taxpayers' money through the court system. If we stop it at the beginning and have contractors at the beginning that are doing the right things, then we do not have to do that at all—and we have not to date. It has been working for our members in industries where it does not work in a lot of other places.

THE CHAIR: How does the code pick up these incidents before any action through the Federal Court or any other current laws?

Ms Cresshull: It is the fact that they have to get a certificate to start with, and those companies are interrogated at the beginning before they are issued with a government contract. We are happy to strengthen the code to make sure that there are more checks and balances along the way, to check in to make sure that a company has not slipped through the net or changed how they operate. These companies are slippery, and it is a hard industry because it is relying on wages. With anything that goes, it is always wages

that get cut first. We see an absolute value in how the code is operating. But any strengthening of the code will, of course, strengthen our members' confidence, I suppose, in whether or not they are getting paid and their conditions are being appropriately issued to them.

THE CHAIR: The light rail has been allegedly reported as underpaying its workers through that construction. If the code is working, why did it come to that?

Ms Cresshull: I cannot offer any insight into the light rail. Our members work in security and cleaning. It is a really services-based industry, and the first thing that will get cut in this industry are wages. These companies will undercut each other, and really the only thing they can undercut on is wages. It is a different kettle of fish, I suppose, than what our members do.

THE CHAIR: In security and cleaning, there is a standard wage that is applied, a minimum wage.

Ms Cresshull: There is a minimum wage, yes.

THE CHAIR: Are businesses not meeting that minimum wage?

Ms Cresshull: Often.

THE CHAIR: Where are they failing?

Ms Cresshull: Often.

THE CHAIR: Do you have recent evidence of that here in the ACT?

Ms Cresshull: Yes.

THE CHAIR: And who?

Ms Cresshull: I would have to provide that later, but absolutely. We have many cases where we have picked up underpayment of wages or conditions or any terms of employment in the ACT.

MS CARRICK: As you said before, things slip through. If that slips through, does the registrar have the investigation powers and the enforcement powers needed to resolve those situations?

Ms Cresshull: We would love to see it strengthened. They have some, yes, but we would like to see that strengthened.

MS CARRICK: When you say "strengthened", how? What would that mean?

Ms Cresshull: The check-in and the auditing to make sure that they are—

MS CARRICK: More regular?

Ms Cresshull: Yes, that is right.

THE CHAIR: On behalf of the committee, thank you for your attendance today. There have been a few questions taken on notice. If you are able to provide your answers to the committee secretary within five business days of receiving the uncorrected proof, that would be very useful for us.

Short suspension.

HISCOX, MR MICHAEL, Assistant Branch Secretary, CFMEU ACT Branch

THE CHAIR: Good morning. We have Michael Hiscox here from CFMEU. Welcome. Please note that as a witness you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. As we have only got 20 minutes for this session, we might go straight into questions. Did you have an opening statement at all?

Mr Hiscox: No, I am happy to go straight into questions.

THE CHAIR: Just for clarification, is the ACT CFMEU under administration right now, due to federal Labor?

Mr Hiscox: Yes, the entirety of the construction division of the CFMEU is in administration, including the ACT branch.

THE CHAIR: How does that affect things here? Does it still operate or not?

Mr Hiscox: The union still operates. Effectively, it just means that the powers of the union that would normally be with officials of the union or committee management or things like that, all of those powers sit with the administrator.

THE CHAIR: Okay. I will come back to myself; we will do five minutes at a time, with each person.

MS CLAY: You put a number of excellent suggestions in your submission, including gender on the tender, and you talked about sham contracting on the Woden Hospital. Which of the bits in your submission do you think are directly relevant to the Secure Local Jobs Code? Secure Local Jobs Code does not do gender on the tender. It is a great suggestion, but it is not really Secure Local Jobs Code. Sham contracting: would that be part of the Secure Local Jobs Code?

Mr Hiscox: With gender on the tender, that is something that we have suggested could form part of the Secure Local Jobs Code, either through the LRTWE system that sort of sits alongside it and is part of it, but it probably would not necessarily be something that is a requirement, to have the code certificate. It would be sort of like—

MS CLAY: A target?

Mr Hiscox: More a target or something that is a requirement for certain projects of a certain scale or a certain size.

With the sham contracting, part of what we were addressing there was our experiences on the Canberra Hospital project, and how we thought the Secure Local Jobs overall system helped address issues of sham contracting there. And that when issues came up or when people came to site that were clearly in these sham arrangements, the overall framework meant that it was dealt with in a much faster, quicker way than we have seen in situations previously—either prior to the Secure Local Jobs Code on ACT government projects, or situations that we see on projects now that are not an ACT

government project.

MS CLAY: And if there were no Secure Local Jobs Code, regarding that particular issue which would have been covered with the Fair Work legislation, tell me what the difference would have been in terms of how quickly it would have been addressed and what the impact on the workers in the ACT would have been.

Mr Hiscox: Yes, sure. Under the Fair Work Act, for example, the obligation to ensure sham contracting is not occurring only applies directly to their employer. And obviously, in construction there is a lot of subcontracting that goes on—legitimate subcontracting as well—and part of that is to help shield the risk of those sorts of things.

Under the Secure Local Jobs Code, it is an obligation not just on the employer but also the principal contractor, who arguably has the most power over what is going on. So, the builder or contractor, I guess, in the case of civil construction, they cannot sort of shield themselves from any blame of what is going on. They have to be involved and part of the process and they can be held accountable if those practices are happening on their sites.

MS CLAY: Part of what we heard in our last session is it is also the accessibility of the rights. So, the difficulty in accessing rights under Fair Work legislation is it is federal and you may need to go to the federal court; there is likely to be a big time lag; you need a lawyer and legal advice to access those rights; and you may end up getting a settlement or getting a post-fact award of damages. But it does not actually prevent the behaviour in the first place. Is that one of the key differences that you can see?

Mr Hiscox: I think that is part of it. I think it also just generally promotes good behaviour. Some of these things that can occur—as it sounds like you heard previously—it can take years and years for that to resolve, and then when it does you can just continue to go back to working like normal. There are often not findings in these things; they come to a settlement with the individual workers involved and no-one would know what exactly happened there.

I think part of the benefit of the framework we have here is that part of the consequences is not just any legal consequence; it happens directly from that individual worker. It affects your ability to continue to tender for work or win work in the territory.

MS CLAY: We have heard from a number of witnesses that have made suggestions around the administrative pathway to getting a certificate—which is equally difficult for an organisation of one, two or four people and an organisation of 1,000 people. There have been two responses to that situation. Some people say we should exempt small businesses, small organisations. The other suggestion is we should provide more support to small organisations and a simpler administrative pathway. Have you got any views on that—noting that, I would imagine, in construction we probably do not have any tiny organisations?

Mr Hiscox: There are a lot of small organisations in construction. I cannot really speak for other sectors, because I am not as familiar with the circumstances there. Specifically within construction, I would be concerned about exempting small businesses specifically because, like the example I said before, construction companies have a

good way of organising their business to avoid accountability and liability. So, I am concerned that if you just provided a blanket exemption, businesses would respond by saying, "Well, rather than just having one business of 50 employees, I now have five of 10," or whatever.

That being said, the intention certainly is not to try to be overly burdensome to small businesses. Especially where, in some of the submissions I have read through for employer groups, certainly when that information is already being asked for from the government and other places, it makes perfect sense to avoid asking for it again and just creating additional work for no reason. But ultimately, everyone has the same obligations, whether you are a small or large business, to pay your people properly and follow those, and I do not think there should be an exemption for smaller ones.

MS CLAY: The simpler administrative pathway is not about giving different standards to smaller businesses. It is about having a simpler administrative pathway to obtaining a certificate, for smaller businesses—and more support for those smaller businesses. Is that something that bothers you or that you have strong views on?

Mr Hiscox: I do not have strong views on providing more support for businesses, big or small, to get them. And in terms of exemptions, I would have a problem with just an exemption saying, "You do not need them." If there was a different pathway, that would not necessarily be a huge problem. The key thing, I guess, is that, big or small, the enforcement is happening in the right way. I think that is the most important.

MS CLAY: Part of the Secure Local Jobs Code and the role of the registrar: clearly there is confusion about what that is. The CFMEU obviously engaged with the registrar in ways that came up in Operation Kingfisher. I would say there is a lot of confusion around. Do you think there is a role for government for better education for industry and the public about what that is? And do you think there is a role to make that registrar more independent and more robust; from approaches, from interference, to have more public transparency, on how people engage if they want to do so?

Mr Hiscox: I think more public transparency with the overall system of procurement and tendering and awarding of contracts would be a good thing, and I think that would be welcomed. I think that should extend across a whole range of things, for one example, the LRTWE plans—I forget the full name for them, but it has sort of been referred to as part of the SLJC. We have often called for those things; that they should just be made public because they are requirements that companies have to comply with them as part of their contract.

I think they maybe briefly were made public for a period and, in those cases, we identified a number of cases where companies were not even pretending that they were complying with those obligations.

In all those instances, there is just no reason why that information should not be publicly available. It is all public money. It is all things that we should be getting delivered. There is no reason why anyone should not be able to look that up on the ACT government website and see what is happening there.

MS CARRICK: Does the registrar have the powers that he needs, for compliance?

Mr Hiscox: I think he most likely has the powers. One of the suggestions we make in there is—I am just trying to remember if what we raised was the issue with the powers or how they are used—and I think it is more so how they are used. One of the things, I guess, that has frustrated us sometimes is the registrar's reluctance to make findings on things unless there is a court decision or unless there is a similar sort of decision.

We have essentially put forward a view that they could undertake more investigative work. Obviously, they are not a court, they cannot make a finding, but there are certain things that would be so obvious or so black-and-white you could make a finding under the Secure Local Jobs Code and move ahead like that.

I do not believe there is anything currently that prohibits them from doing that. They might have a different view and say that is a barrier, but it is something that they currently do not do, or if they do it, it is very rare that that would happen.

MS CARRICK: Could it be resources that limit that investigative—?

Mr Hiscox: Potentially. I think it is partly resources. I think it is partly they just do not necessarily see it as their role. I think they see their role is they take action once and let the findings be made elsewhere.

MS CARRICK: A previous witness said that the companies should do more reporting to the registrar. Would you support that?

Mr Hiscox: I do not necessarily have any problem with it. I think there certainly is a need for ongoing compliance, and I think we include some of those comments in there. That is the main frustration that we hear from employers that are part of the system; is that they have got their certificate and then they know, through the grapevine, other employers are not doing the right thing and there does not seem to be any consequences for that up until they have to maybe go get their certificate again. That is a point-in-time audit, so if everything is fine by that point, then there is no consequence for it. So, I think ongoing compliance is important.

MS CARRICK: If something is going on at a workplace, how do you know whether it is the registrar or Fair Work that comes in and has a look at these things? Who is ultimately responsible?

Mr Hiscox: Both have got different obligations. The Fair Work Ombudsman would maybe not have an obligation but have the ability to investigate underpayments. The registrar has the ability to do so similarly, as far as it relates to their obligations under the code.

MS CARRICK: Is there overlap?

Mr Hiscox: There might be some overlap but, in practice, probably neither are doing that. The Fair Work Ombudsman much more rarely now would pursue individual one-off cases of underpayments. They tend to take a much more, I think they use the term "strategic litigation". Unless there is really substantial, they probably will not bother with it. But rarely would both be showing up to site. It probably would be neither

in most cases.

MS CARRICK: So, Fair Work is more reactive if they get a complaint or something, as opposed to being out there undertaking compliance?

Mr Hiscox: Yes, they probably are more reactive, but even in those cases they have obviously got limited resources as well. They do not get a complaint and say, "Okay, we are going to go do an inspection now." They will want to get a sense of the scale of the problem, and if they did not think it was significant enough, they would not pursue it. But similarly with the registrar, if they had a report of that, I do not think they would pursue it either. I think they would just refer it to the FWO and go from there.

MS CARRICK: Thank you. What evidence exists that the two-gate model produces better procurement outcomes?

Mr Hiscox: The model itself probably has not been around long enough. It is probably hard to evaluate in the ACT specifically. I think we quote some of the academics that cite the two-gate model as what they consider to be one of the best models for procurement in Australia.

I guess, the principle of it, which is one we obviously support, is the previous system where you would evaluate, say, 10 per cent for safety or 10 per cent for industrial relations or things like that could lead to quite perverse circumstances where, at least in theory, someone with 0 per cent on safety could get there if they were good enough on some of these other criteria. I think most people would agree if your safety is so poor, you do not deserve to be successful in any of those projects.

The overall intention is that there are certain thresholds that if you do not meet, you really should not be in the mix for it at all. Similarly, once you have met those, then whoever is able to put forward the best tender should get it.

MS BERRY: Thank you. I should say that I know Michael through his work through the CFMEU, but I have not discussed this committee hearing with him at all.

I was curious, Michael, about work health and safety records of employers in the construction industry; that it can be quite unsafe, hard work. If there is an employer that has a record of bad work health and safety continuously but it is not ever gone to litigation, is that something that you think should be used as evidence in securing a Secure Local Jobs Code or throughout the code's application?

Mr Hiscox: Yes, I definitely think it should be. As you said, I think construction is the second most dangerous industry in terms of fatalities. In terms of serious workplace injuries, it is the most dangerous. In this year just passed, we have actually increased the number of deaths in construction, which is obviously heavily concerning. Similar, I guess, to the conversation around FWO, WorkSafe have limited resources and they have to be strategic in how they pursue their litigations, which certainly means a lot of breaches do not get pursued even when they should.

I think it is definitely worthwhile looking at other records or other information that could be brought in, that companies that have poor safety records suffer a consequence

for that. Most of the time, these companies are doing it to save money. That is the only reason. So, why should they get an unfair advantage over another company because they have got a poor safety record?

MS BERRY: What are the kinds of corners that they would be cutting to save money in work health and safety?

Mr Hiscox: There is a number of different things, but the most clear-cut one that we would normally see—and especially you see this is in residential—is the way they provide access and egress to a site. Most of the time, the safe way to do it would be to erect scaffold or do something similar. We will see situations where people are just working off ladders or things like that. Fall from heights is obviously one of the most serious risks. And then, I guess, it just comes down to general planning and coordination, which often comes down to there are not sufficient resources to ensure that it is one person's role to, say, ensure that, "Okay, what are going to be the access ways on site when we have these deliveries? How are we planning for vehicle movements?" Those sorts of things.

MS BERRY: Do you have examples on some of the bigger contracts where there might be subcontracting, which is perfectly legal and legitimate, where there might be a record of work health and safety issues that may not have been taken into account or are still not being taken into account?

Mr Hiscox: Not off the top of my head. That is probably something we would have to provide later. All the major builders will subcontract, in a legitimate way as well, but in terms of safety issues that probably have not been adequately addressed, that is probably something we need to take on notice.

THE CHAIR: Thank you, Ms Berry. Last year, in September 2025, the CFMEU joined employers and the Albanese government in endorsing the National Construction Industry Forum's *Blueprint for the future*. That document specifically calls for reviewing procurement red tape, aligning existing pre-qualification schemes, and examining barriers for small business to participation. The CFMEU's own administration subsequently cited the blueprint as part of its reform but, as I understand, the CFMEU is advocating for an expansion of the Secure Local Jobs Code with additional certification and compliance. You mentioned compliance just earlier, and you say that they do have powers but they are not doing enough in that space.

How did the CFMEU come to that position, with the Secure Local Jobs adding additional burden and compliance in comparison to the *Blueprint for the future* which is meant to be looking at reducing red tape, removing barriers and helping people in the industry?

Mr Hiscox: The point you sort of said, our position there, that position was to review the procurement legislation—and obviously it is being reviewed here and we support it being reviewed. In terms of adding burdens or adding red tape, what would you say are the things that we are proposing that would add burdens or add red tape?

THE CHAIR: Extra compliance; calling in the council to do more inspections and so forth. Are you suggesting they are not doing enough?

Mr Hiscox: That is not a burden to the employer, though. That is obviously additional work for the registrar to undertake. The only way that puts an additional cost on the employer is if the registrar finds non-compliance.

THE CHAIR: Did you agree that there should be extra reporting with the businesses on the Secure Local Jobs, and how they are being compliant?

Mr Hiscox: I think that was asked before. I do not really have a strong view about whether they should renew a certificate more frequently or less frequently. I guess what is most important is the ongoing compliance.

There are different methods about how you can make sure that businesses are complying properly. I do not know if it is the best thing to say, "Send us something every month saying you are compliant or not," because if they are getting around it currently then asking for more reports every month will just be more reports that are not correct. I do not know if it is necessarily worthwhile just getting additional information from them.

THE CHAIR: Okay. We have come to the end of this session. On behalf of the committee, we would like to thank you for attending today. I was not sure if there was any questions taken on notice today?

Mr Hiscox: Just one around safety.

THE CHAIR: Around safety? If that is the case, are you able to provide answers to that question within five business days from receiving the uncorrected proof?

Mr Hiscox: Yes, sure.

THE CHAIR: That would be most helpful for the committee. Otherwise, good morning and have a great day.

Short suspension.

HARFORD, MR GREGORY, Chief Executive, Canberra Business Chamber

THE CHAIR: Good morning, Mr Harford. You are here from the Canberra Business Chamber. Please note that as a witness you are protected by the obligations of the Assembly and parliamentary privilege and you are bound by those. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. We have not been taking opening statements but if you have one, are you able to table?

Mr Harford: I did not really have an opening statement, so I am happy just to go to questions.

THE CHAIR: We have got 30 minutes, so you are one of the lucky ones to have more time here. I will start it off. Your submission recommends repealing the Secure Local Jobs Code in its entirety. Could you talk us through what led to the chamber having that position?

Mr Harford: Yes, absolutely. Thank you for the question. Essentially, we fully support the idea that employers should be complying with the rules. We fully support the idea that workers should be kept safe when they go to do their jobs. But I think the point is that there are already provisions to deal with these issues through a multitude of commonwealth and territory rules and regulations. It seems to us that having a separate process in place around the so-called Secure Local Jobs Code really drives cost; it drives complexity; it contributes to reduced value for money for taxpayers, at the end of the day; and ultimately it reduces competition in the market.

Our view is that, yes, these things are all very important. They should be set out when the territory is seeking to procure work. They should be a condition of the contract of that work. But you do not need to have a separate process up-front where businesses effectively have to jump through multiple hoops to get a certificate before they are allowed to bid, because that is a deterrent to entering the market, and we know that there are firms that do not do business in the ACT or seek not to do business in the ACT because they do not believe that the cost of compliance is worthwhile.

THE CHAIR: Obviously, the cost of compliance is time but also financial for the entities, but that is no guarantee that they will be able to get any procurement through ACT government contracts or jobs, right?

Mr Harford: No. That is absolutely right. And the cost is not just the cost of getting the certificate; it is the cost of maintaining records; it is the cost of time spent complying with the rules and regulations. It adds up. There is a big lot of impact.

THE CHAIR: You have obviously heard that from your members. I am not asking you to disclose any members or specifically what they have said, but you are gathering your evidence directly from people in the industries trying to look at procurement for government, right?

Mr Harford: Yes, absolutely.

THE CHAIR: You raise concerns about the administrative burden of complying with

the code, particularly in the duplication of requirements. Can you explain what that looks like in practice for a Canberra business trying to undertake government work?

Mr Harford: In essence, a Canberra business is required to comply with the law. Additionally, they are required to comply with a Secure Local Jobs Code process that requires them to prove—before they bid for a contract, up-front—that they are complying with the law and have complied with the law. That evidential basis, that is where the cost comes in. That is where the complexity comes in. And, as I say, it is one of the things that deters people from seeking to bid for territory work, because there is an up-front compliance cost with no guarantee that they are going to get the work.

THE CHAIR: You mentioned that there is duplication of things in the code and ACT legislation, but also federal legislation. Is there any part of the code that is not part of any ACT legislation or federal government legislation that we should still consider? Or is it all pretty much covered?

Mr Harford: It is all pretty much covered. The way this works, as I say, is it is a process that you have got to go through up-front. That process is all about compliance with the law, essentially. If you are complying with the law, you are complying with the law. We do not think you need to go through those sorts of processes to need to prove that. And if you are a bad actor—and I think the reality is there are very few bad actors in the world, but if you were a bad actor—if you caught the tail end of some of that conversation, if you are falsifying documents, you are going to falsify documents anyway. This is not going to stop bad guys.

THE CHAIR: Yes, of course. What record should the government be compelled to publish about ACT versus interstate contracts that have been awarded subcontractor payments and external tender representations, to establish whether that procurement is competitive and properly independent? How could the government report that this code is delivering for the ACT?

Mr Harford: I think the question you have got to ask is, ultimately, you are looking at the cost of ACT government procurement—which typically is higher than it might be in other states and territories as I understand it. There is a premium cost to doing business here. The Secure Local Jobs Code is part of that.

We know that there are, for example, exemptions that are sometimes issued to the code because there are not people in the ACT willing to go through the process in order to bid for government work. That says to me that it is a barrier to entry, and if you removed the up-front barrier and you incorporated contractual requirements into your tender contracts, that would be a better way of delivering good outcomes and you would hopefully see better value for money as a result of that.

THE CHAIR: Obviously it is a bit of a lengthy process to go through a procurement process for any entity applying for a tender with an ACT government job. As I understand, they have got to go through that process every single time. Does the Secure Local Jobs help in that in any way? Does it help make that process a lot smoother or more streamlined or is it just purely another administrative burden on applying for any procurement jobs?

Mr Harford: I think honestly, it is an administrative burden. In some cases, you have to provide a local industry participation plan. That is not necessarily part of the code directly. The LRTWE processes, again, are slightly different from the code processes themselves. But overall, I think we would see this very much as a compliance requirement which drives cost, deters competition and prevents entry into the market.

THE CHAIR: I know it is a bit of a hypothetical, but maybe based on evidence that you have heard from your members, if the Secure Local Jobs Code was removed, do you think, based on feedback from your members, that you will get more businesses back involved in the construction industry here in ACT; that you might see an increase in people putting in for tenders, and maybe actually make it more competitive because you have got a broader range of applicants?

Mr Harford: I believe that to be the case. As I say, we believe the Secure Local Jobs Code deters entry into the market. Therefore, if this were abolished and if the provisions to protect workers were made part of a contractual requirement, you would see more businesses tendering up-front, which hopefully would deliver a more competitive outcome for the taxpayer.

THE CHAIR: And so that would just be added into the contract in itself, right?

Mr Harford: That is right. The actual requirements to pay workers properly, keep them safe and all that stuff, does not change; it is just the process for delivering that. And if the government were to be including that as a condition of the contract, that could then become a question of ongoing contract management and you would then, presumably, see different levels of management depending on the scale and size of the contract.

THE CHAIR: It would just be one process for application and that is it. Okay.

MS CARRICK: Regarding proof of compliance at the beginning, we heard from previous witnesses that it helps weed out bad actors. They used the example of the cleaning industry and are very supportive of that step to try to weed them out before contracts are awarded. Do you see any value in that at all?

Mr Harford: To be honest with you, there are minimum terms and conditions for employing people. There are thousands of pages of law about what you need to do to employ people. Every business in Australia is required to comply with the law. Those are federal requirements; they are set federally. I do not believe that having a separate ACT process on top of one which everyone is required to comply with to prove compliance with something is going to resolve issues. Frankly, I also do not buy that there are bad actors who are willingly trying to do the wrong thing. In my experience, certainly members of the Canberra Business Chamber are fully aware of their legal requirements and they work very hard to make sure that they are doing the right thing by their people.

MS CARRICK: But the Canberra Business Chamber would not have members of every industry. Would every cleaning contractor be a member of your—

Mr Harford: No; I would not say every cleaning contractor is a member of the chamber. We certainly have members of the chamber who are cleaning contractors.

MS CARRICK: When we talk about the barriers to competition from having the code and having contractual requirements to protect workers, does that not fragment the skills in undertaking compliance? If you have the registrar, you have the skills within one entity as opposed to them being scattered across the ACT government. Does it not provide some economies of scale by having that compliance function in one area and saving costs?

Mr Harford: My understanding is that Procurement ACT runs procurement processes on behalf of the ACT government. You could certainly centralise your contract management, but that is actually a different point from whether you should put in up-front processes that add cost and reduce competitiveness. That is one option. The other option is that you make sure that your contract managers are trained to do the jobs that they are employed to do and that they are managed.

MS CARRICK: Compliance seemed to be difficult because workers' rights slip through the cracks. We have heard some examples of it. One witness said that maybe there should be more reporting. Another said that would not really work. How do you ensure proof of compliance? Should there be stronger whistleblower laws for breaches of workers' rights? How do you bring it forward? One witness said that Fair Work are not proactive. They do not get out on every site. They might hear a complaint, but they will not investigate everything; they do not have the resources. Who is actually responsible for getting out and investigating? That would turn every contract manager in the ACT into a workplace investigator.

Mr Harford: I would question the fundamental premise of that question, which is that workers' rights slip through the cracks. Workers' rights in this country do not slip through the cracks. If someone is deliberately flouting the law, it is a reasonable assumption that they will be prosecuted with the full weight of the law, whether that is a workplace health and safety issue or whether that is a Fair Work issue. Let me tell you: employers live in fear of doing the wrong thing. They are not out there trying to reduce worker rights. They are not out there trying to do the wrong thing. They are typically working very hard to ensure compliance. There are sometimes situations where people get things wrong and sometimes honest mistakes happen. They are generally resolved through conversation between workers and employers.

A very small number of people might willingly engage in criminal behaviour, but I think the numbers of those firms are very small. There is a whole framework to deal with them. Putting extra compliance requirements across the whole industry is really not a solution that makes sense when you are dealing with a very small number of people. It is kind of like saying, "There are some criminals in the community, and therefore we need to treat everyone like a criminal." That is not the case in the business community and that is not the case in the community at large.

MS CARRICK: Thank you.

MS CLAY: Greg, you have talked about the Secure Local Jobs Code being duplicative. We have had some evidence from witnesses describing the difference in being able to access ACT rights and making sure at the outset that a government procurement spend is upholding really good standards versus having to take someone to the Federal Court,

getting legal advice and incurring the fees for that, and possibly, after a period of some years, getting a retrospective award of damages to cover the issue. The standards might be the same, but the pathway to enforcing your rights is quite different if it is in the ACT or federally. Does that change your view at all?

Mr Harford: To be honest, they are commonwealth rules that we are trying to enforce here if we are talking about workplace terms and conditions. If we are talking about health and safety, that is an ACT issue. The territories and the states around the country have referred their industrial relations powers to the commonwealth. That is the appropriate place to deal with those. Again, just because somebody may have a problem with a process, it does not mean you need to treat everyone in business like a criminal and put these processes in place. It does not make sense when there are rules.

MS CLAY: Sure. You said that procurement in the ACT is more expensive than in other jurisdictions. I would love to know the data. Do you have any data evidence on that?

Mr Harford: Sorry—what I was trying to say was that it is more expensive to do business here in the ACT. There are extra costs that businesses face here in the ACT because they are in the ACT, because principally the ACT government makes it harder and more expensive to do business, whether that is through rates charges or extra processes such as the Secure Local Jobs Code. There is a whole range of things. Definitely the feedback I get from members is that it is much more expensive to do business here.

MS CLAY: Do you have any sort of evidence or comparison? Do you have any data?

Mr Harford: I do not have a magic number that I could show you to say, "It's here and here." But, regarding workers compensation, I have members telling me that it costs them four times as much per employee here in the ACT than it does in Queensland. We have commercial rates.

MS CLAY: Unless your members happen to be in the horseracing industry, in which case the ACT government has taken care of that expense for them.

Mr Harford: I am not talking about the horseracing industry, but commercial rates here have gone up by eight per cent this year. I do not have perfect numbers from across the border, but, on average, they are less than four per cent in New South Wales. There is a whole range of things where we are not competitive, and many of those things are within the ability of the ACT government to look at.

MS CLAY: Has the ACT government, you or any organisation put together a comparison of those?

Mr Harford: We have comparisons of some things. One of the things I am really keen to do is to pull that together more generally, but I do not have that.

MS CLAY: I will not ask you to take it on notice, but I think that, if you did that piece of work, it would probably be useful. You mentioned the difficulties of local jobs, and we have had this in discussion in the public domain quite a lot—that the Secure Local

Jobs Code does not, in fact, do anything for local jobs.

Mr Harford: Indeed.

MS CLAY: The figures that we have from the various questions on notice that have been asked in parliament show that the ACT government's procurement spend—the local procurement spend—dropped from 54 per cent, which was already quite low, frankly, to 34 per cent over the past six years. Our local spend has dropped and that wealth has left the community. Of course, some of those people will live temporarily in the ACT and deliver the work, but the actual wealth of that procurement spend has not been local. It has dropped to about a third and is heading downwards. Do you think the ACT government should have some positive levers to try to encourage local benefits for procurement in addition to secure work?

Mr Harford: Yes. We would certainly be supportive of making sure that ACT firms get the benefit of ACT government procurement, but we need to be very careful that we are not destroying value for money through that process. We do not want to put up trade barriers that make it even more expensive to do business here. New South Wales has recently changed, or is changing, its procurement rules so that they weight their procurement decisions in favour of New South Wales businesses. We could do something similar through our procurement policies, but, again, we need to be careful that we are not creating adverse outcomes through that process.

MS CLAY: You would probably not want to see hard laws come in, but there are definitely some ways to change how we do procurement to encourage it?

Mr Harford: Absolutely. But we have to be careful there too, because we need to make sure that there are opportunities for ACT businesses and those in other jurisdictions as well. The reality is that other jurisdictions are bigger than us, and, if we effectively try to put up barriers to stop New South Wales firms crossing the border and doing business here, some sort of tit-for-tat arrangement would not be a good outcome for ACT businesses.

MS CLAY: I would imagine that, if the New South Wales government has made a change, we could safely make the same change.

Mr Harford: Potentially.

MS CLAY: There are a lot of different opinions on the Secure Local Jobs Code. We have had calls to strengthen, expand and extend. We have had calls to remove it altogether. We have also had a middle ground call that the administrative pathway for smaller organisations should be more supported by government and should be simpler. The theory behind that is that an organisation of one, two or three people complying with exactly the same requirements as a major corporation of 1,000 people is quite inequitable and maybe not the best system. Do you think there is room to come up with a simpler administrative pathway for certain smaller organisations or the community sector, or more government support for certain types of organisations?

Mr Harford: I think the best way to deal with that issue is to, first, assume that everyone is actually complying with the law and doing the right thing, and, second,

include it as a condition of the contracts that are being awarded and make sure that those contracts are being managed appropriately. If you have a small business of two or three people and you have—I am making this up—a $300,000 contract to do something, the management of that contract would presumably be a lot lighter than, say, a $500 million contract to build a stadium or whatever. That is how you deal with that issue. I do not think keeping a flawed framework and somehow then creating bandaid solutions to help smaller businesses navigate that process is the answer. The answer is to deal with the flawed process itself.

MS CLAY: You mentioned a number of times that we should assume people are complying with the law, and I absolutely agree. We should always assume goodwill and good faith where we can. We have had a number of submissions and witnesses giving us specific examples of wage theft, the impact on workers, the impact on migrant workers, the impact on refugees, and the difficulty in claiming that. It has come up in construction, cleaning, hospitality—in quite a range of high-risk industries. Have you looked at any of that evidence or heard any of that evidence? We can assume everybody is complying with the law, but we have many examples of where people here in the ACT are not. Maybe we need greater protection.

Mr Harford: If there is an issue with wage theft, which is now a federal criminal offence, there are already processes for dealing with that issue. If those processes are not suitable, then I would suggest it needs to be dealt with at a commonwealth level. If the Fair Work Act is not delivering, that is something that needs to be dealt with by the federal government. The ACT government should not try to develop a solution for people here in the ACT, because the end result of that is undermining the federal industrial relations framework and potentially having a patchwork of eight separate sets of rules around the country, if everyone is doing that. We have to accept that this is a federal issue and it needs to be dealt with federally.

MS BERRY: My questions go a bit to where Jo Clay was heading around work health and safety and industrial relations. If work health and safety and making sure that workers are paid appropriately is the minimum requirement and the Secure Local Jobs Code is just asking for proof of that minimum requirement being applied and it weeds out bad actors, how can that be bad for businesses in this town?

Mr Harford: There are two reasons that it creates problems. First, it is an additional layer of compliance. Typically, businesses work very hard to do the right thing and pay their employees properly. That is core business for any firm. What is not core business is having to justify that, prove that, apply for a Secure Local Jobs Code certificate, be audited, and incur all the time, cost and energy of that, which is, particularly for smaller businesses, really problematic. Also, the point I would make is that we know this whole process deters entry into the market. There are businesses that do not bid for ACT government work, not because they are bad actors who try not to pay their employees properly but because they do not think the value they will receive from ACT government work, if they are lucky enough to win ACT government work, makes it worthwhile to go through those compliance hoops in the first place. That means that there is less competition in the market for ACT government work. Competition tends to lead to better prices.

MS BERRY: Shouldn't the community, though—and they will—have a very high

expectation that the funding that they provide through rate payments is being spent appropriately? I agree: not everybody in business is a criminal. I do not think any of us are saying that. What we are saying is that we want to weed out the criminals, or the bad actors, and the community should have an expectation that that would be the case, and that it should be publicly seen somewhere.

Mr Harford: I think that is absolutely right: the public should expect that ACT government money is being spent prudently, wisely and cost-effectively. I would suggest that the best way you can do that is to have as many people as possible bidding for work so that you can get the best value for money, and you can then ensure that the requirements, whatever they are, are being met through a condition of the contract. That is the thing: contracts are legally binding. If you sign a contract and you breach that contract, there are remedies in that contract. You can be taken to court and you can have damages awarded against you. Those are things that businesses take seriously, and people work very hard to make sure they deliver what they are required to do.

MS BERRY: We heard, as Ms Clay said, that a number of witnesses this morning spoke about real experiences. You will know about these, and it is no surprise that you would have a different perspective to the Business Chamber and the unions, as far as the Secure Local Jobs Code goes. I have seen on the Work Health and Safety website that there were 173 falls from heights in 2023-24 and 2024-25 that workers compensation was agreed for. Obviously, there have been some significant work health and safety issues and injuries caused on work sites. It might not be the case that somebody is doing that on purpose. Of course, we would never think that somebody would want to harm somebody on purpose on a work site. However, there is clearly something wrong when people are being injured.

Mr Harford: Absolutely, and workers should be able to go home safe every day. I absolutely endorse that. I do not know if the numbers that you are citing relate to ACT government procurement work. But, while we have a Secure Local Jobs Code in place, it does not stop an accident happening in the workplace. What stops an accident happening in the workplace is good attention to health and safety and making sure that people stay safe.

MS BERRY: When the government brought in silica training to keep workers safe, particularly in the construction industry, some construction industry businesses said that would be a further burden on the industry. Do you agree that having that kind of work health and safety requirement—silica training, asbestos training and working from heights training—is a burden?

Mr Harford: Not when the right people are being trained. If you have someone who is potentially exposed to silica or asbestos or who is going to be working at heights, obviously they need to be trained to make sure that they know how to manage the risks of that. Where we have had concerns about some of those rules is where they are blanket rules that do not necessarily make sense—for example, where someone responsible for cleaning this building is required to hold a silica card, even though they are not likely to be exposed to a lot of silica, any more than you are. You work here.

MS BERRY: In this building, there is likely to be asbestos—absolutely.

Mr Harford: My question, though, is: if you are working in an office and you are essentially exposed to the same risks that, say, a cleaner is, whether that is around silica or asbestos, why would you not roll those requirements out to members of the Legislative Assembly, for example?

MS BERRY: The Secure Local Jobs Code is designed to ensure that those work health and safety requirements are being met by construction companies and other businesses in the ACT, putting aside the number of people who might not require that training. If the case is that we just want to ensure that businesses are keeping their workers safe—yes, I understand that there are regulations around a number of these things, but they are not being met by everyone—doesn't that lead to better competition, if all of the good people are competing for the same thing and we have managed to eradicate the ones that are not doing the right thing?

Mr Harford: No, because you are not eradicating the people who are not doing the right thing; you are eradicating the people who do not see the value in the compliance requirements around it. There are plenty of good businesses out there who fully meet all their health and safety obligations and choose not to participate in ACT government procurement work because they do not wish to undertake the compliance requirements of the Secure Local Jobs Code. I would make the point that there are workplace health and safety rules, a whole statutory framework, around dealing with workplace health and safety in place now. The Secure Local Jobs Code does not make a business more safe and it does not make the worker safe. What is making the worker safe is compliance by the employer with health and safety regulations and enforcement action taken by WorkSafe where appropriate.

MS BERRY: But accidents are still happening.

Mr Harford: Accidents do happen—that is correct—and I think that, where employees have an accident, something has obviously not gone right. Typically, no-one is out there not training their staff and not complying with health and safety requirements. Where you find that businesses have not complied with health and safety rules, they tend to be the subject of enforcement action.

MS BERRY: What I am finding hard to understand is why an employer would not want to show that they are doing all the right things by getting a Secure Local Jobs Code. I do not understand why that would be—

Mr Harford: Because the process is bureaucratic and because the process is cumbersome and expensive, and there may be other ways that they can show that. For example, let's imagine a business has a perfect health and safety record. As part of their response to a tender, I would expect them to say to the ACT government, "We have a perfect health and safety record. We've had no accidents. We've had no near misses. We've had no prosecutions." That is absolutely something that they should be celebrating. It is good, and I would expect that it would come through a tender process. What you do not need is a separate government process at the front end to try to force people to prove that when, actually, they can prove that anyway through their process. It is a compliance and cost issue.

THE CHAIR: Thank you, Mr Harford. On behalf of the committee, I thank you for

taking the time to come along today. Do you recall any questions taken on notice?

Mr Harford: No.

THE CHAIR: You are off the hook on that one. Have a good morning.

Mr Harford: Thank you.

HARRIS, MR SCOTT, Director, Workplace Relations and Policy, Master Builders ACT
NEELAGAMA, MS ANNA, Chief Executive Officer, Master Builders ACT

THE CHAIR: We welcome Mr Scott Harris and Ms Anna Neelagama from Master Builders ACT. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Because we have a short amount of time, we have not been taking opening statements—we just go to questions—but, as you have one, are you happy to table it? It looks pretty long.

Ms Neelagama: It will take less than three minutes, but it is your call, Chair. I can table it.

THE CHAIR: Because we have started early, you can start with your statement, if you like.

Ms Neelagama: I promise I will rip through this. Thank you, Chair and committee members, for the opportunity to appear today. We ask that our written submission be taken as read. The Productivity Commission has estimated that the annual regulatory burden on Australia's housing and construction sector is between $18 billion and $47.5 billion. That is a staggering cost for our industry, which is already struggling with declining productivity, tight margins and persistent inflation. At a time when governments are resource-constrained, we should be removing unnecessary regulation, not perpetuating it. We are here today because the case for retaining the Secure Local Jobs Code has simply not been made.

Our position rests on four key points. Firstly, there is no evidence to justify its continuation. The government has failed to demonstrate, through credible monitoring, evaluation or performance measures, that the code delivers meaningful outcomes for workers, businesses or the community. In previous inquiries, ministers and officials have been unable to substantiate its effectiveness beyond anecdotal claims. Secondly, the code duplicates existing laws. Workplace health and safety and workplace relations have advanced significantly since its introduction. These obligations are already regulated and should be enforced by existing commonwealth and territory authorities. More regulation does not mean better outcomes.

Thirdly, the compliance burden is excessive. Our industry is overwhelmingly made up of small- and middle-sized family businesses. The cost of complying with the code simply to compete for government work creates an unnecessary barrier to participation, reduces competition and ultimately increases costs for taxpayers. Fourthly, the government itself acknowledges confusion about the code's purpose. If a regulatory framework remains poorly understood after years of operation, that raises fundamental questions about its design, effectiveness and necessity. The government's own submission repeatedly emphasises what the code is not, including for local industry participation, procurement outcomes and awarding contracts. This only reinforces the question of what unique outcome the code is achieving.

There is also an opportunity cost. In an already resource-constrained government,

skilled people are employed to administrate this additional layer of regulation. These resources could be redirected elsewhere, to areas delivering greater value for the Canberra community. I want to be very clear, this is not an argument against safe workplaces, fair employment conditions or responsible procurement. These are non-negotiable. It is an argument for evidence based regulation, efficient government and taking accountability for the burden on small- and middle-sized businesses.

The central question for the inquiry is straightforward: what does the Secure Local Jobs Code achieve that existing workplace laws and regulators do not? Supporters point to individual examples and good intentions, but, after years of operation, there remains no evidence demonstrating the code delivers unique outcomes beyond the mechanisms already available. Until that question can be answered with evidence, the case for retaining the code remains unproven. We thank the committee for its consideration.

THE CHAIR: Excellent. Thank you very much. We will run through the table here. We will give each person seven or eight minutes to ask a series of questions. It could be on any topic. I think that is a more efficient way for us all to ask the questions that we need to. In your submission, you mention that you would recommend that the code be repealed. Can you explain what that would change for local businesses and what it would mean if it were repealed?

Ms Neelagama: It would mean a reduction in red tape and an increase in productivity, but that productivity would be two-sided, because the government would no longer have to administer the code. Scott, do you want to supplement that?

Mr Harris: Chair, at the same time, as we said in the opening statement, we are not against safe workplaces and best work practices or anything that comes from that. It is already in commonwealth law and territory law. Those rules have to be abided by already and they have to be in place. It means decreasing a level of regulation and obligations on the small- to medium-sized businesses who do not understand what they have to do, other than make a workplace safe or pay people correctly. That is what they are concentrating on. It is removing one burden from one group of people, and from the government at the same time, and it can be re-allocated to deliver other services for the community. That is the main question behind it. We are not against the code's concept; it is about how the code is managed and put into place.

THE CHAIR: It seems that there is duplication of what this code is aiming to achieve. It is under other legislation, whether it be ACT legislation or federal government legislation. Are you still confident that, if we removed the code, workers would still be protected under existing legislation?

Mr Harris: Yes, Chair. That is a very straightforward, down-the-line yes, because the regulator's obligation and responsibilities are to make those places safe and ensure people are being paid correctly and working to the right conditions. It is not part of the code's responsibility; it is actually given to the regulator to do anyway. It is just a tick-box exercise to say, "I've done this." I do not have any problem.

THE CHAIR: Obviously, the code applies to procurement and jobs that the ACT government goes out with, and it uses ACT taxpayers' money for that. There is no difference with any builder doing a residential job and using a client's money to do the

job. They are still obliged to provide the right wages and the right conditions. There is no difference. The same legislation that is under the ACT and the federal governments applies to them also. In other words, there is extra compliance for ACT government procured jobs than for private sector jobs, but they do the same thing?

Ms Neelagama: That is correct. The same compliance applies for non-government work.

THE CHAIR: You have members in the ACT but also in New South Wales as part of the MBA. In terms of competitiveness between New South Wales and the ACT, how does the ACT compare with New South Wales, particularly on administration, compliance and red tape? Are we competitive or do your clients prefer to work in New South Wales?

Ms Neelagama: The majority of our membership is committed to Canberra. They like to build in Canberra and that is what they are here to do, but obviously we have many builders who are dual-licensed builders. There is no Secure Local Jobs Code in New South Wales, I believe, but the cost of business is considerably higher in the ACT when you look at insurance costs and payroll costs alone. To answer your question, Chair—and this is not, I guess, central to the inquiry's purpose—it is more expensive to do business in the ACT. I know that the government submission goes to great pains to point out that the code is not here to deliver local procurement outcomes. When you are evaluating local procurement outcomes, one of the basic facts is that an ACT business has a lot higher cost to participate than others, simply because of those payroll tax and insurance costs.

THE CHAIR: You describe builders having to provide similar information through several different processes. Can you give us a practical example of that duplication?

Ms Neelagama: When you are competing for government work, you have to go through a pre-qualification process. On certain project sites, you have to comply with culture and construction and you need to get a Secure Local Jobs Code. In certain instances, you are required to have an OFSC accreditation, and for every job, even if you are on a panel, you have to resubmit that documentation every time. There is no central portal where you can find them every time. And, in every instance, you have to do a LRTWE and a local industry participation plan. There is the one-off cost of achieving the various certifications, but then there is the constant re-application and replication that businesses have to go through. Generally speaking, the procurement process has become a lot more lengthy and less concise over time.

THE CHAIR: Thank you.

MS CARRICK: It seems to me that there are two bits to all this. There is the certification process and then the compliance side of it. With respect to the certification, are there any aspects of it that you would keep? There is the weeding out of bad actors in the first place. We had evidence of the cleaning industry, for example. There are a lot of migrants working in the industry and there is perhaps a power imbalance between the employer and the employee, and there have been some poor practices. The question is about up-front weeding out.

Ms Neelagama: I would say those employers are required to treat people well and pay people under existing laws. The world has changed a lot since the original Secure Local Jobs Code was introduced. There is high scrutiny, rightly, on employers to do the right thing by their workers. This is simply a duplication of existing laws and existing regulatory processes.

MS CARRICK: On the compliance side, then, say there are poor practices in paying people or work health and safety. Who goes in? Who is responsible? Is it the commonwealth or the registrar? The registrar has investigative, compliance and enforcement powers too. Who goes in in the ACT? Who actually does the investigations, the enforcement and the compliance?

Mr Harris: Ms Carrick, it says, first of all, that on worksites and these ones here, it is either the FWO's responsibility or it is WorkSafe's responsibility to be on the site. The union has their own responsibility to ensure people who are their members are being looked after. It is the same for us as an employer association. It is our obligation to inform our members that they have to follow the rules. I have never heard of the regulator, who is looking after this code, ever being on a worksite. I cannot even say that a person who has one of these qualifications has brought to my attention that they have ever seen the regulator there, but they can tell me when the FWO has been on site, they can tell me when WorkSafe has been on site, and they can tell me when the union's been on site. No regulator for this piece of paper or this certification has ever turned up there.

Ms Neelagama: And it is a registrar, not a regulator. I think they have fairly limited scope. It is limited to the renewal of certificates. When we saw the reported underpayment of workers of Altus Traffic, it was only because the certificate expired. The union was able to discover underpayment of workers. In that instance, the Secure Local Jobs Code did nothing for workers.

MS CARRICK: It stopped work.

Ms Neelagama: Which I assume cost some money—a few days of stopped work.

MS CARRICK: Between WorkSafe, which is an ACT government body, and Work Health and Safety, which is a federal body, where is the difference about who actually manages compliance?

Mr Harris: There will be two parts to that. One will be whether it is a commonwealth funded project. The OFSC will be a part of the auditing of those. If it is an ACT one, it will be WorkSafe, to do with work health and safety. But the FWO will have responsibility and obligations, as long as they are a statutory company, have a sole trader or partnership. The FWO can do a full investigation into it and hold them accountable.

Ms Neelagama: Generally speaking—and maybe this is a good question for Procurement ACT regarding projects—I believe you are also meant to submit a WHS management plan. When they are selecting the best person for the job at the best price, they should be looking through the WHS management plan that is tailored and targeted to the project, and is, I guess, the best statement of how the employer is going to manage

risk for workers on the project.

MS CARRICK: When it comes to reporting an unsafe workplace or lack of pay, do WorkSafe and the commonwealth triage what they can investigate or do some people slip through the cracks because nobody actually investigates them?

Mr Harris: From my history and everything else, especially with those organisations, those organisations will ring us as an employer association and say, "We've just received a complaint against one of your members," or a potential member. "We're about to go on site and do the investigation. We would like you to come along." This is all a relationship. Ninety per cent of the time, the first time you hear about it is when one of your members rings up and says, "I have a regulator on site at the moment." It would be Work Health and Safety, the FWO or the unions. "What do I have to do? What are my obligations? What's my responsibility?"

We walk them through their obligations and responsibilities and provide the information, such as not denying them entry to the workplace. We walk them through that and show them that they are actually following best practice. Also, if there is an accident on site, the site is shut down. That is the rule. You have to report it within 24 hours, or even quicker, to WorkSafe, and you will have an investigator standing on your doorstep saying, "What went on? Where's my paperwork to go with it? What's happening from there?" It is usually takes 15 minutes to an hour. I will have a work health and safety inspector on one of my sites, if I have raised complaint about it not doing the right thing. It is the same if a union raises a complaint about them not being safe. The site will have a work health and safety inspector there to look through what is going on—the paperwork, who has been trained, who has not been trained, and whether the right people are doing the job. The industry is highly regulated. The document we are talking about here is just a supplementary tool, and it just takes more time and moves resources. People doing this could actually be doing work health and safety, or they could be working on the pay rates and everything else, making the government's money do better.

MS CARRICK: Thank you.

MS CLAY: Anna, the CFMEU put some data in their submission. You may or may not have looked at it. They said that the costs of construction have not increased since the Secure Local Jobs Code came in. What they specifically said is that non-residential building costs in the ACT went up by 8.8 per cent from 2020 to now, but around Australia it went up by 37 per cent, and residential went up by seven per cent here in the ACT, but around Australia it went up by 34 per cent. That does not match what you said about our costs going up here. Do you know what is going on with the two different sets of data?

Ms Neelagama: I could not speak to that data, but the data that this committee needs to look at is for any government project that has been delivered and see whether costs have increased there. I would note that the CFMEU's submission also points out that there is little public information on how the code is operating and there is no publicly available data on how code-covered work is structured for employees. The CFMEU themselves acknowledge some serious shortcomings and lack of evidence when it comes to the code.

MS CLAY: This was one of the other aspects of your submission: you wanted to have a lot more public evidence and public data on the Secure Local Jobs Code. Can you tell me specifically what you reckon government should be making public?

Ms Neelagama: If you look at the government submission, they go to great lengths to detail the number of visits ordered and investigations. What they cannot do is justify better outcomes in safety, workplace relations and things like payroll compliance, enhanced outcomes in procurement and better outcomes for workers, whether they are construction workers or any other workers covered in code activities. I think we need to look at the outcome, not just the amount of activity generated from the registrar's office. Many third-party organisations were only able to produce anecdotal evidence of the good, the bad, the ugly when it came to the code.

MS CLAY: That is a fair point. You also said you would like the code to be abolished, but that, if it is not abolished, government should implement the Operation Kingfisher recommendation that compliance is solely determined by the registrar. Can you talk me through it—that you think the registrar needs more independence and the ability to not have anybody tell them what to do?

Ms Neelagama: That is correct. Operation Kingfisher was very focused on the independence of the registrar, but, frankly, the case has not been made for the code to be retained. It is not doing anything for workers, it is not doing anything for local businesses, and it is consuming government resources.

MS CLAY: In terms of local procurement—this is a really interesting point—the answers from the government on questions on notice show that, six years ago, 54 per cent of ACT government procurement was being spent locally. Frankly, 54 per cent does not sound like much for the ACT government spend. That has now dropped to 34 per cent. It has actually decreased. The government know that it has decreased. They have the data on that too. Do you think there are benefits in government money being spent in a way that is sending more to local businesses and local residents and keeping more of that wealth circulating within our community, rather than the trajectory we are on at the moment where more of our ACT government spend is going to non-local businesses?

Ms Neelagama: Absolutely. Everybody wins in that instance, including the government's payroll receipts. Every time an interstate or multinational wins, the territory actually loses from its coffers. The government's submission was really interesting because it said that there is confusion about the code and it is not here to deliver these local economic outcomes, but the code specifically states that there is a relationship with the local industry participation plan. The local industry participation plan, which must be submitted with every tender, needs to be tied to the procurement contract, which it is not currently required to do, and the head contractor needs to be held accountable to the local industry participation targets. That is on every project. That is from major projects downwards. It makes perfect sense to offer local work to local businesses, who, as we have seen in some recent inquiries, can do the job. They submit the best tender with the best value for money.

MS CLAY: Yes, and then sometimes they do not win the tender. We heard from the

Canberra Business Chamber—and we have not verified this yet—that the New South Wales government may have changed their procurement weightings to give more weight to local tenderers. We discussed this and the view is that, if the ACT made changes to our procurement system to benefit locals that matched changes the New South Wales government has made, there would unlikely be any negative consequences. We would not have the New South Wales government not wanting to send work our way. We would not have any cross-border issues. Does it sound like we should be looking at some of the tools New South Wales and Victoria are using to encourage local procurement spend and see if we can perhaps match those in the ACT?

Ms Neelagama: Absolutely.

Mr Harris: New South Wales councils have had this in place for years. It is part of their tendering process, where they actually give the local community a 15 or 20 per cent weighting on their assessment when they look at RFTs. It has been in councils for years. It does work, but it always keeps coming back to one question. There is no problem in giving it to a local person, but has the local person got the right capacity, capability, skills and everything else? I am very strong on retaining the money locally, but there still has to be value for money for the government in that service. It might be better to go external instead of internal on that type of arrangement. But it has always been there. The local people have always had a heavier weighting—at least I know that is the case in New South Wales, because I was part of local councils over there. If you are a local person, you are weighted a bit heavier than anybody else coming in.

MS CLAY: Do you know whether we have that weighting in our procurement system?

Mr Harris: My understanding—and this is only my understanding—is that there is a small weighting put to locals. Procurement people would be able to give you more definition, but there is supposed to be a weighting in that process.

MS CLAY: I will ask them. The other really useful piece of feedback we have had from witnesses and evidence in submissions is that, yes, we have a federal system of IR laws, and, yes, that system has changed and improved since 2020, but accessing rights under that system is actually quite difficult. The specific example we were given was of refugee and migrant cleaners. For them to enforce their rights in the Federal Court took several years. There was a $300,000 award of damages. It came years later. One of their members died before receiving the award, and, of course, they, needed to get union advice, legal advice and representation in order to access those rights. Is there a benefit in having something at the outset of ACT procurement that is intended to avoid those sorts of breaches from coming up in the first place?

Ms Neelagama: There is nothing stopping government, as the client, requesting things like payroll records throughout the course of the delivery of the project to check that workers are not being underpaid. We do not need a separate compliance framework on top of that which really only looks at compliance around renewals, not through the life of the project which is being delivered for the territory. Good employers do not mind participating in a system of random audits to avoid the outcomes that you are describing.

MS CLAY: Do you think we would benefit from some more proactive ACT government publication of the results? You talked about publication of the outcomes of

the Secure Local Jobs Code. We could have publication of tracking the proportion of work that is going to local industries so we do not have to ask parliamentary questions to try to tease out the data. Are there aspects where you think a proactive government report each year or some proactive tracking and publication of the results would help?

Ms Neelagama: There is great merit in a quarterly report to the parliament on how local businesses and the local workforce are being supported. I think that is part of what is missed with the code in particular. Anyone can win government work, provided they have a certificate, which means crews can be imported from Newcastle, Melbourne or Perth. That procurement process is not actually looking at whether we are building the workforce of the future locally. Those people come, they deliver the project, they get paid living-away-from-home allowances, and then they leave. The current procurement system and the grading in the awarding of tenders do not take into account how local employers are developing their workforce, and indeed the benefit local workers might get from working on certain projects of distinction in the local economy. That is a lost opportunity, not only in the Secure Local Jobs Code but also elsewhere in the procurement framework.

MS CLAY: Thank you.

STEPHEN-SMITH, MS RACHEL, Minister for Education, Minister for Child Development and Wellbeing, Minister for Finance, Minister for the Public Service and Minister for Health Infrastructure
JAMES, MR JORDAN, Senior Director, Work Safety Group
LUKINS, MS ELLEN, Executive Branch Manager, Work Safety Group
WRIGHT, MR ROBERT, Deputy Director-General, Office of Industrial Relations and Workforce Strategy

THE CHAIR: Welcome to our public hearing into the Secure Local Jobs Code. We have here the Minister for Finance, Ms Rachel Stephen-Smith, and officials from ACT government. Please note as a witness you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Did you have an opening statement? No. Excellent. We can get straight into it. What I will do is I will give each member 10 to 15 minutes at a time, and they can ask a whole series of questions on any substantive matter. I think it is more efficient to do it that way. I will start off. What is the present legal and operational status of the Unions ACT procurement MOU?

Ms Stephen-Smith: The MOU has been terminated by agreement of both parties.

THE CHAIR: Minister, a central concern raised by industry is that compliance requirements increase the cost of doing government projects. Has the government undertaken any comparison of procurement costs before and after the introduction of the code?

Mr Wright: Robert Wright, Deputy Director-General, Office of Industrial Relations and Workforce Strategy. I am also the registrar of the Secure Local Jobs Code. I am unaware of a comparison having been undertaken.

THE CHAIR: Your own discussion paper acknowledges concern about duplication requirements between the Secure Local Jobs Code, ethical treatment of workers evaluation and other government procurement processes. Has the government undertaken a detailed assessment of which requirements are duplicated with existing workplace laws and/or procurement obligations?

Ms Stephen-Smith: I think the purpose of the review that the discussion paper was at the first stage of was to have a look at those things. The statement of procurement values came in after the Secure Local Jobs Code, as did the ethical treatment of workers process in the way that it is currently implemented. Of course, the ACT government has always had a commitment to ensuring that workers are treated appropriately and their rights are upheld. I think that goes to your other point, Chair, that in terms of duplication with existing laws, the point of the Secure Local Jobs Code is to get an up-front certification that organisations that are intending to tender for ACT government work are compliant with their legal obligations.

Mr Wright: I have read and acknowledge the privilege statement. In terms of looking at this, the government is committed to undertaking an independent review of the code, and it will now be progressed following the current committee inquiry.

THE CHAIR: Figures provided to the Assembly on notice show that 83.5 per cent of the value of 13 major project contracts awarded in 2024-25 and 25-26 went to head contractors with registered addresses outside of the Canberra region. What proportion of the ACT government construction procurement went to local head contractors before the code was introduced compared to today?

Ms Stephen-Smith: I am not sure if anybody has those figures, but I would say I am not sure that in any case it would be an apples-to-apples comparison given the number of significant major projects that have been undertaken in the ACT since the introduction of the Secure Local Jobs Code. Obviously, we have always built schools and health facilities, but the Canberra Hospital expansion, the light rail project, the theatre project, the light rail stage 2A project, the new northside hospital project and the CIT project are all major projects of a much larger scale than most previous ACT government construction procurements. Tier 1 contractors do tend not to be headquartered in the ACT, so it is really important to recognise that that is not necessarily the apples-to-apples comparison that you would draw. Part of the question is: what are the local participation requirements of those tier 1 contractors? The local industry participation policy, which is separate to the Secure Local Jobs Code, specifically requires major contractors to engage local companies as subcontractors. That would not necessarily be captured in the procurement data that you were talking about. Having said that, I might hand over to Mr Wright or Ms Lukins.

Mr Wright: I will start off, and then I might throw to you just about some of that data, Ms Lukins. I think it is important to note the code is not designed to directly support the awarding of ACT contracts to local businesses; rather, it seeks to create a level playing field for businesses applying for territory-funded work and to encourage fairer, better and more secure local jobs for workers. The specific procurement policies and processes that the minister referred to, such as the Canberra Region Local Industry Participation Policy, or LIPP, I can manage separately from the code and support the awarding of contracts to local businesses. The LIPP applies to all approaches to market by territory entities and was implemented from 1 January 2017.

Ms Lukins: Ellen Lukins, Executive Branch Manager Policy in Work Safety Group. I acknowledge I have read the privacy statement. In terms of the code and what we know about code-certified entities and local, there are around 2,400 code-certified entities. I think as at 30 June 2026 there were 2,396. If we look at those code-certified entities, around 57 per cent were ACT-based entities, so that is just over half of those entities. Around 36 per cent were New South Wales based. In terms of the size of those, around 70 per cent of those are entities with less than 20 employees, so smaller to medium.

THE CHAIR: This morning we had calls from union representatives calling for the government to fund the cost of compliance with the Secure Local Jobs Code for smaller community organisations. Is this something the government is considering or has thought about or is looking into?

Mr Wright: Sorry, Mr Milligan. I just missed that. Would you mind repeating that?

THE CHAIR: From union representatives today, they suggested that the government fund the cost of compliance for the Secure Local Jobs Code for smaller community organisations. Is that something that you have considered?

Ms Stephen-Smith: It is not something that has explicitly been considered. It would be part of doing business with the ACT government. A lot of community organisations—the contracts that they enter into would be primarily contracts for labour, and in some cases they would also be considered to have a relatively vulnerable workforce. Of course, ACT government does expect—this was part of the counting the cost report—that our non-government organisation partners are tendering or entering into commissioning processes reflecting the full cost of delivering services, and that includes the regulatory costs. I think it is important to understand, depending on what sector you are talking about—if you are talking about the human services sector, for example, a non-government organisation, the cost of Secure Local Job Code certification would be not substantial compared to the cost of some of the other regulatory requirements that those organisations have. Part of the ongoing conversation with our community sector is how we ensure that they are able to reflect the full cost of delivering quality services when they are engaged with ACT government commissioning or procurement processes. In that way, when we then pay the full cost of delivery of service, if we can get to that point, we would in effect be funding the cost of becoming secure local job certified.

The other point that I would make is that—one of the questions that we asked in the discussion paper, I think, and one of the things that we have discussed is whether the threshold for procurements is the correct threshold, given the threshold, which I think is $200,000, was set when the code was established in 2018, so whether that threshold for all procurement should be reviewed.

The third thing I would say in relation to that is there is some flexibility in relation to grant programs, so if it is a relatively small amount of money and it is being delivered through a grant, some organisations would not be required to have secure local job certification. Sometimes directorates are using that as an assurance to be assured that the providers are in fact meeting their workplace relations and industrial relations obligations, their Fair Work obligations. It is really important to us that our non-government partners also meet those obligations to their workers. I also am aware that at least one other non-government organisation has required secure local jobs certification for its own construction project despite not being required to by law because they wanted to be assured that the company they were engaging was meeting their ethical obligations.

Mr Wright: Mr Milligan, one of the pieces there that we are particularly interested in as part of the review is where we have multiyear projects, where the $200,000, particularly for community sector organisations, over, say, a five-year contract, becomes a lot less in terms of the value over that prolonged period. That is one of the things we will be looking at as part of that independent review. I would also note that the indicative costs for those microbusinesses are lower than what is applied to larger businesses for the audit of fees. We are looking between $565 and $1,000 for microbusinesses and $970 to $1,750 for small businesses of five to 20 employees, whereas for the large businesses that can go on average up to $3,500. There are different rates applied for smaller organisations, but, as I said, that period which the procurement runs over is something that we will definitely be looking at.

MS CARRICK: It seems to me that there are different aspects of the Secure Local Jobs

Code. There is the certificate at the beginning and the different views about, on the one hand, the cost of compliance, time and energy and that it is not worthwhile and then, on the other hand, that it weeds out bad actors right at the beginning so they do not tender for the jobs. How many people that apply for a Secure Local Jobs Code certificate are rejected?

Mr James: Jordan James, Senior Director, Workplace Legislation and Policy. I have read and understood the privilege statement. That is not something that we have great visibility over because of the way the auditing is done. In order to get a certificate you are required to receive an audit that says you have met the requirements of the code. Those auditors manage that before it even gets to us for a decision. They can submit a form to us saying that this business has not met the requirement, but we do not always get it, so it is a hard piece of data to be able to give a confident number on at the moment.

MS CLAY: Do you want them to take it on notice?

MS CARRICK: Yes. Were they saying that they cannot get the data because the auditor weeds them out before they even get to the registrar?

Mr James: The auditors are external to the ACT government. They are private businesses, and they manage that on behalf of the registrar, doing that function. It is not necessarily reported to us when a business does not meet the requirements.

Ms Stephen-Smith: Can I just say I am just interested if there is an opportunity for businesses also to—they are obviously not going to meet the requirements if they have been repeatedly found to be in breach by going to the Fair Work Commission, but if the audit finds that they are in breach and they rectify that, that is an opportunity for businesses to improve the way that they are doing things. One of the things we certainly heard anecdotally early on was that the audit process itself was valuable for some SME businesses and non-government organisations because it provided them with an assurance that they were doing the right thing in what can be quite a complex environment.

MS CARRICK: Is it possible to take on notice the registrar's understanding on how many businesses may not be successful in getting the certificate? We have people complaining that this is burdensome and saying, "What is the outcome of it all? What is the benefit of it all?" If everybody just gets the certificate, if we do not know how many people do not get it, it just does not provide very good evidence for why we have it.

Mr Wright: We can take it on notice, Ms Carrick.

MS CARRICK: On to the compliance side of it, the registrar has got investigative powers and enforcement powers, but this is the polarisation in people's thoughts about the whole thing. Some people think presumably that is good. Other people think that it is a duplicate and there is already other legislation that manages that compliance side of it. How often does the registrar use his compliance powers? And what outcomes have there been on investigations and enforcement?

Mr Wright: I might start off, Ms Carrick. Primarily with the code matters, we are

looking to leverage from decisions of administrative bodies such as the Fair Work Ombudsman, where there have been decisions, like a breach of industrial law, which are publicly available. We are also interested in breaches of WHS law by WorkSafe ACT and other similar entities. They are the decisions that we are basing the majority of determinations around businesses on. In terms of investigations, in the 2025-26 financial year there were 33 registrar-initiated investigations, and in terms of—

MS CARRICK: I assume that is public somewhere.

Ms Lukins: I might just note it is attached to the ACT government's submission.

Mr Wright: Yes.

MS CARRICK: Sorry to interrupt. Keep going. Thirty-three registrar-initiated investigations—why weren't they then forwarded onto WorkSafe or other regulators?

Mr Wright: We do forward on where we believe there may be breaches of the code to those organisations, but there are a lot of reasons for registrar-initiated investigations, and not all of those might be things that pertain to the Fair Work Ombudsman or the WorkSafe ACT.

MS CARRICK: Can you tell in the commonwealth law, WorkSafe, ACT or other laws, apart from the registrar, where there is a gap where the registrar would need to step in and do the compliance work? Other jurisdictions do not have a Secure Local Jobs Code. Where is the gap in the ACT that the registrar has to step in?

Ms Lukins: I am happy to start. If we look at the dashboard information that is attached to this submission, you can look to see where the sections of the code that are alleged to have been breached are being investigated. That has got the split between the different sections and obligations under the code. That might be where there are requirements to have subcontractors certified. The relevant one to the question that you are asking about compliance with industrial laws or prescribed legislation is the section 11 compliance, and that is highlighted; you can see the purple bits in that dashboard on the top right. It indicates where you are seeing specific noncompliance with industrial laws in the code.

MS CARRICK: I am still not clear why if it is industrial laws the registrar would investigate—I can understand if the registrar would investigate compliance with the certificate. If a subcontractor does not have a certificate, that would be the registrar's role to investigate that noncompliance. If it is actually an industrial law, why wouldn't the registrar pass that on to the regulator of the industrial law?

Ms Lukins: That is where they would be referred to relevant authorities, where those matters are coming up, and through complaints that the registrar receives. Where it is noncompliance with an industrial law, that is where those matters are referred to the relevant regulatory authority.

MS CARRICK: Fundamentally, the registrar's compliance role is around the certificate?

Ms Stephen-Smith: Yes.

Ms Lukins: The code and its requirements, yes.

Ms Stephen-Smith: There are ongoing requirements, so it is not only about initial certification. There are ongoing requirements to stay compliant with the requirements. Correct me if I am wrong, but, as an example, if there is an allegation that a provider is not compliant with the law, the investigation that the registrar might undertake is, "Is that true? What evidence is there before the Fair Work Commission that the contractor has been breaching the law?" Then if there is evidence that they have been breaching the law, that is an investigation that is being done by that regulator, but there would be consequences in terms of sanctions under the code.

MS CARRICK: The regulators, WorkSafe, do they have public registers of who has breached their regulations or the law? Can you see who has breached the law from the regulators that regulate all this stuff?

Mr Wright: Yes, we can, Ms Carrick. Those decisions are usually publicly available.

MS CARRICK: Why when you are doing a procurement wouldn't you just look up the regulators and see who is in breach?

Ms Stephen-Smith: To start with, that would require every entity that is undertaking a procurement to separately go and look up all of the Fair Work Commission, for example, rulings in relation to all of the companies that have tendered, so that potentially ends up being quite duplicative. Part of the reason to do a certification process is that it is to do it once and then have a central point of contact to ensure that that compliance with the code is maintained. Also there may be actions that are currently in train or commencing before the Fair Work Commission where there is not necessarily a finding and it would not necessarily be public, but the auditor may be able to identify that there are risks associated with that, or the auditor may be able to identify something that legal action has not yet been taken on.

MS CARRICK: One of the complaints is it is a bit of a set and forget. You get your certificate, and then nothing much happens after that until you have to renew it again, and there is no ongoing proactive compliance of it. There is no reporting back by the companies that they are still compliant. How do you ensure that they do not get their certificate, become noncompliant and then nobody looks up—they might become noncompliant by Fair Work or WorkSafe. They might be on some register, but nobody even sees that because they have got their certificate.

Mr James: There is a range of mechanisms that we and the registrar proactively monitor. The way the code is structured, a lot of responsibility is put on the head contractor who is in contract with the territory. A lot of our engagement is often with the head contractor, looking at the subcontractors that are engaged. We engage with the contract managers in the background to look at that and monitor, and we have a complaints mechanism which allows for anyone to submit a complaint where there may be concerns about an entity that has been noncompliant, and we will then take relevant action. There is a range of proactive mechanisms that the registrar and the compliance team undertake to monitor that.

MS CARRICK: Perhaps you could take that on notice and tell us what they are, because we have heard from other witnesses that there is no reporting back from the companies to the registrar about compliance or about anything.

Mr James: It will vary depending on whether they are a subcontractor or a head contractor—how often they are engaged in territory-funded work. Yes, we can take on notice to provide more information on it.

MS CARRICK: I have just got one more. How many are in the Secure Local Jobs team? And how much does it cost?

Ms Lukins: I am happy to start with that. In the SLJC team there are around 10 to 12 FTE. That is probably the count, including me as well as the team and registrar, so it is quite a small team. It has a senior director that leads the team and is structured into compliance officers that sit under the senior leader.

MS CARRICK: Out of the 10 to 12, what are administrative or certificate and compliance based?

Ms Lukins: I will hand over to Jordan.

Mr James: It is a multiskilled team. The compliance officers essentially perform all of the functions—reviewing certificates, undertaking investigations and assessments. There are currently four ASO6 positions, which are those compliance officers, with the senior officers sitting above that. They are required to hold a certificate IV in government investigations as our baseline qualification to support the functions that we do from a compliance and investigations perspective.

MS CLAY: Operation Kingfisher covered the issue of the independence of the registrar. Have you got any views on whether you think the registrar needs to be independent, whether you think that has functioned well?

Ms Stephen-Smith: The registrar is legislatively independent and cannot be directed by the director-general or a minister.

MS CLAY: Did you engage with the recommendations of Operation Kingfisher? Do you think in practice they are operating in a truly independent manner, or would they benefit—

Ms Stephen-Smith: There was nothing in Operation Kingfisher that indicated that the registrar was not operating in an independent manner.

MS CLAY: The government is not looking at whether in practical terms that registrar needs to be a statutory independent role?

Ms Stephen-Smith: No, not to my knowledge. I guess that is something that the committee can give some consideration to, and it would obviously be something that would potentially come up in the review as well. Noting that we are about to undertake a review, we would not be pre-empting that by making structural changes without some

evidence to support that.

MS CLAY: Can I just check, Mr Wright, what capacity you are appearing here today? You are listed on our sheet as appearing as the deputy director-general. Are you appearing as the deputy director-general or as registrar or as both?

Mr Wright: Obviously I hold both those roles, Ms Clay. I am here primarily in my function as the Registrar of Secure Local Jobs, but I am also the Deputy Director-General of the Office of Industrial Relations and Workforce Strategy.

MS CLAY: We heard quite a lot of evidence from people in the community sector and also some people in smaller organisations that compliance with the Secure Local Jobs Code is more onerous for smaller organisations than it is for large organisations. An organisation of two, three or four people that has to obtain a certificate has a different compliance burden than an organisation of 1,000. We have had two responses to that. Some organisations are calling for more exemptions for the community sector or for certain organisations, and others are calling for a simpler administrative pathway for certain organisations in sectors and of a size and for more help from government. Have you had any feedback on that? Have you got any thoughts on that issue?

Ms Stephen-Smith: Obviously we talked earlier about the threshold for the value of procurements or commissioning processes that the code applies to. It is important to recognise that Secure Local Jobs Code certification is only required for procurements that relate primarily to the delivery of labour. Very, very small organisations with only a few employees would be unlikely to be participating in tender processes that are primarily for the provision of labour unless those tenders were quite small. That is one of the considerations, recognising that there probably are a number of very small organisations that are potentially being captured by that $200,000 threshold, given that it is for a single contract rather than per annum. That is really I think one of the things that we would be looking at, rather than exempting businesses or organisations of a certain size. It is certainly, again, a piece of feedback that we would look at through the review if they are outside of those cleaning, traffic management and construction sectors.

MS CLAY: I think it has primarily been raised by community sector and environmental groups who are triggering that $200,000 tender. Is government already looking at that issue?

Ms Stephen-Smith: Yes. Something we raised in the discussion paper was whether those thresholds are appropriate.

MS CLAY: The community sector has also suggested that their indexation is not really meeting their costs. They have been saying this for a number of years. Their indexation is not based primarily on wage price index, and they have also suggested that their funding from government is not indexed appropriately to cover things like their genuine compliance burden from the Secure Local Jobs Code. What is the response of government to that?

Ms Stephen-Smith: That is one of the things that we, as I mentioned earlier, have been working through in the context of the *Counting the Costs* report, but also our immediate

response to the *Counting the Costs* report was to change the community sector indexation arrangements. Community sector indexation is 80 per cent wage related and 20 per cent CPI. For the wage-related part, we changed it from being a WPI indexation to being the higher of WPI and award, and I think it was CPI. There were three elements to it, and it was going to be the higher of those. We have been indexing the wage element of community sector indexation to award wage increases, which have generally been higher than WPI over the last few years.

MS CLAY: That is excellent. That is covering the cost of wages, but it is not covering the cost of the compliance impact. We heard figures before of what the auditor fees were. I have written those down separately. We have got $565 to $3,500, but that is just the cost of the external auditor. That does not count for the cost of the labour, the hours from the organisation. Is the cost of the labour compliance directed on the organisation something that government is looking at assisting with?

Ms Stephen-Smith: As I mentioned earlier, Ms Clay, the requirement to be a code-certified entity applies to a new procurement, and we would expect that in a new procurement or commissioning process or even a grants process, if it is relevant, that organisations would be putting in a proposal that reflects the full cost of delivering that service. One of the conversations we have been having with the non-government sector is that part of the competitive process in procuring, whether it is human services or environment in the non-government sector, is there has been a behavioural response to that competitive tension over time where non-government organisations have been lowballing it with the proposals that they put in to government and then coming back and seeking increases in funding over time.

What we are saying is we want a genuine understanding of what it costs to deliver that service—all of the costs associated with delivering that service. If you are getting a Secure Local Jobs Code certification, it is probably because you are participating in a new tender or commissioning process, and therefore you have an opportunity to put in a tender or a proposal through a commissioning process that reflects the full cost of doing business, and we would expect that you would do that. To the extent that people are not doing that, that is problematic—we recognise that. That is part of the ongoing conversation we are having with the sector in relation to procurement and grants processes.

MS CLAY: Minister, that does sound sensible and much better for budgeting purposes, both for those tendering and for ACT government, but that is not what happened on recent tenders. In the environment sector there were two recent tenders where the minister said that there was a review done. The government's review said, "That funding window needs to increase." The government went out to tender and said, "The funding window will not increase," so the organisations tendering were told by ACT government, "We are not increasing the funding window." In that environment do you think it is realistic for those tenderers to have increased their tender price to match their costs when they have already been told by ACT government, "We know the funding is too small, but we're not increasing it"?

Ms Stephen-Smith: It is probably getting outside of the scope of this hearing, but that is part of the challenge of the ongoing conversation in relation to managing budgets. I would expect organisations would come back and say, "If that is your funding envelope,

this is what we can deliver, and it is not going to be everything you want, because that is not realistic within the size of the funding envelope. If you want us to do everything, this is what it's going to cost." That does require mature conversations—I understand that—between ACT government officials who are undertaking the commissioning or procurement process and the organisations involved, and that can be challenging. I think this is an iterative process, but we certainly recognise that for organisations, particularly where they are entirely reliant on ACT government funding, they have an obligation to meet their legal obligations to their workers. They should be doing this anyway.

The actual cost of meeting the requirements of paying your workers fairly and ensuring that you are participating in portable long service leave, if that is a requirement for you et cetera, doing your work, health and safety assessments, meeting all your regulatory requirements—you should already be accounting for those costs. That in itself requires a labour component to it inside the organisations. I think the aim when we were setting up the auditing process at the time was that if you had all your ducks in a row in terms of already meeting all of your obligations to your employees, it should not be significantly burdensome on a business to have an auditor come in.

Mr Wright: Ms Clay, you referenced writing down those figures. They are in the ACT government submission as well.

MS CLAY: I wrote them down from the ACT government submission. It is most helpful to read submissions. We saw a lot of content in the public domain and in your submission explaining that the Secure Local Jobs Code is not primarily there to ensure that procurement is kept local. That is certainly what is showing up in the figures. The ACT government's local procurement spend dropped from 54 per cent to 34 per cent over the past six years, and actually, frankly, both of those numbers look low to me. Only a third in the ACT looks very low. Even a bit over half looks quite low. We have heard today that New South Wales councils, for instance, have much higher weightings for local participation than ACT government has. Do you think there is a benefit in having more of that wealth circulating within the ACT? And if that is not in the Secure Local Jobs Code, where should that sit?

Ms Stephen-Smith: A 10 per cent weighting is the standard weighting for local industry participation plans. I mentioned earlier that we have had some very large construction projects with tier 1 tenderers that you would not expect to be headquartered in the ACT. We have also undertaken some quite large procurements in the human services space. We procured all of the care and protection services. Again, the contractor for residential care and at least a couple of the contractors for fostering kinship care are organisations that are not headquartered in the ACT, but they are not-for-profit organisations who would obviously be employing people locally to undertake to deliver those services.

To the extent that the wealth is largely tied up in wages, that wealth would be circulating in the ACT because the people actually work here. For all of these sectors, actually, the whole point of the Secure Local Jobs Code is it is targeted at sectors where the tender is primarily for the cost of labour, other than probably construction. Most of the cost of construction is in labour, but there are a lot of other costs as well. The actual people who are being paid are living here.

MS CLAY: We have heard evidence that does not agree with that. We heard evidence in the construction industry in particular—but we did not get a lot of specialists in—in which they said crews were imported and then went home again. So that is not keeping the wealth local, nor is it, in actual fact, building our skills pipeline in an area when we really, really need our construction skills pipeline to be reinforced.

Can you provide the committee with any data? If you say that tenders may be going interstate but the labour is, in actual fact, local and is remaining local, can government provide any data on that, over the last six years, to contradict the figures I put up?

Ms Stephen-Smith: I think that is probably a matter for Infrastructure Canberra to look at what the compliance with the local industry participation plan has been, in terms of those major tenders or construction tenders.

Mr Wright: We can take that on notice, Ms Clay. It is not information pertaining directly to the Secure Local Jobs Code. It is the local industry participation policy.

The code requirements apply to territory-funded works like covering labour above $200,000, construction except for excluded works, traffic control management, building or industrial cleaning, and security services.

MS CLAY: Can you tell me about the inter-relationship between the local industry participation code and the Secure Local Jobs Code? Because they are interlocked, are they not? The one picks up the other?

Ms Stephen-Smith: No.

Mr Wright: No.

Ms Stephen-Smith: No, they are two separate parallel policies. And that is part of the consideration in terms of our review, and, again, waiting to see what comes out of this process; other overlapping requirements between the two different sets of policies and then other overlapping requirements between the Secure local Jobs Code and the ethical treatment of workers.

We recognise that there are a number of streams of requirements in the procurement process, and to what extent are we asking for the same information, and can we streamline that and make that easier for businesses? I do sometimes use “businesses” as shorthand, I have realised, but businesses or organisations that are—

MS CLAY: Organisations. Yes, sure. We have had a number of small, useful suggestions on how the code could be improved. One was why you get a 30-month certificate. Why not 36 months? That looked like a fairly minor and useful change, if it helped people. Are you looking at small changes like that, and how did you come up with which industries are excluded? I cannot see a published list of criteria by which government has said, "These industries are covered. These industries are excluded."

Ms Stephen-Smith: That work was done at the time of the legislation. We are very, very interested in people's views about what could be improved. That is why we are doing a review in the first place. So, yes.

The industries that are primarily excluded are primarily excluded because they are professional sectors where you would expect those workers would have significant market power and be reasonably well paid. The point of the Secure Local Jobs Code is to support and protect workers who are more vulnerable to exploitation, which is why cleaning, security, traffic management and construction are the named sectors.

Media and telecommunications; real estate services; financial insurance services; professional, scientific and technical services; and medical and other health services tend to be services that are higher paid, higher qualified workers with more market power in themselves. In addition, things like hospital services have already quite a significant regulatory environment wrapped around them, that supports those workers and it tends to be sort of public service provision that upholds that.

MS CLAY: Community and environment sectors were not in that list, but they are covered. So, maybe you can take on notice: is there a statement of criteria about why community and environment services are included?

Ms Stephen-Smith: They would be included in the context primarily of labour with an estimated value of $200,000 or more.

MS CARRICK: I was just going to say, on what Ms Clay was saying earlier about the $200,000 and the environment groups: they trigger that $200,000 because they use volunteer labour. There will be one or two paid staff, but there will be hundreds of volunteers and so therefore they can do bigger contracts and they trigger it. That was all.

MS BERRY: Am I able to ask questions about the review? I know we are kind of doubling up, doing a review here and doing a government review. You have been describing it as an independent review. Who is conducting the review?

Mr Wright: We are waiting for the end of this particular process, Ms Berry, but then we will go out and find an eminent person who independently can conduct that review on behalf of government.

MS BERRY: So, you are going to consider the committee's recommendations before implementing the review?

Mr Wright: We will indeed, Ms Berry.

Ms Stephen-Smith: Just to be clear, we will try and do the two processes in parallel so we will be able to commence the review quickly, rather than waiting for the government response to this process before we start.

Mr Wright: Indeed.

MS BERRY: Okay. Because we have talked to some of the witness recommendations or thoughts around the Secure Local Jobs Code and one of the points that was made was around procurement transparency; that there was not enough transparency around procurement and that all the information should be available for everyone to see, even

during the procurement process. That is a question. Not everyone might agree with that.

The other thing that was interesting that came from some of our witnesses, particularly the business chamber and the Master Builders Association—of course, they want to get rid of the code completely—when we drilled them on things that could improve in the code, they were suggesting that there was no evidence to prove that the code was working. Is the review considering that kind of activity? Is there evidence that the government has now to show that the code is doing its job?

Mr Wright: In terms of the code doing its job, we have got data that suggests that we have better compliance as a result of the introduction of the code. But we will consider all the things which are taken from this committee hearing, and in independent review.

MS BERRY: Is that compliance data public?

Mr Wright: Some of that compliance data is in the government submission, which was the information that Ms Clay was referring to. You can see, over the years, that there is better compliance by participants.

MS BERRY: But is that somewhere where businesses can see it? We have had some witnesses say, "We believe it is doing the job" but we have had other witnesses say, "There is no data to back up the evidence that you are suggesting."

Ms Lukins: That dashboard that was included was based on a financial year within the government submission. The advisory council does receive at meetings a quarterly update around that data. So, that is going there.

As part of those discussions with council, we have been discussing what we might publish, in terms of that data. We have been working closely with the council to consider what from that dashboard is useful to be publishing on the website. I think we have held back to see where we land with reviews before finalising what we do publish on that dashboard.

MS BERRY: Can you remind us who is on the advisory council? It is probably in your submission, is it?

Ms Lukins: Perhaps not, but we do publish the names of members on our website.

MS BERRY: If I can shorten that and say, are Master Builders and Chamber of Commerce represented on the advisory council?

Ms Lukins: They are individuals that are appointed. It is our employee representatives. It is Kasey Tomkins, Michael Hiscox and Stacey Sharkey. In terms of the employer representatives, we have Josh Rynehart, Anna Neelagama and Greg Harford. And we have the ex-officio member of the registrar.

MS BERRY: Okay. Those discussions have been taking place on the Advisory Council about that evidence?

Ms Lukins: About the dashboard information and what we might be able to publish.

MS BERRY: When you talked about random audits—because we have been talking a bit about the auditing, and we have been hearing from people about this potential of duplicating different audits by various organisations—in the review work, are you going to that question of whether or not the audits that the government's registrar is doing or the compliance officers are doing is enough? Or are you taking evidence from other regulators when they are doing audits? Like, if Fair Work does an audit of someone and finds they have got a certificate, do they report to you, "We have done this audit and this person is underpaying their staff," or something?

Mr Wright: Those decisions would be public. Breaches of industrial legislation would be public and, as part of the certification audit, they would be picked up as part of that. If they happened to a code-certified business during the life of the certificate, we would be looking to that as well. And, as stated a little bit earlier, we also get complaints, for which there is an official complaints process, and we take those into account as well.

Ms Lukins: Can I just add to that? There is a requirement on code-certified entities, where there has been an adverse finding, ruling or order made, to be notifying the registrar when that occurs. There are several mechanisms by which we are able to identify.

MS BERRY: This will be, I think, considered as part of the review work, but what if there is a situation where an employer has a record of non-compliance with the Fair Work Act or work health and safety, but it does not go to litigation but it is a continuous record of bad behaviour? Is that considered as evidence, or is that not enough? Does it have to go to litigation or does a continuous bad record count?

Mr James: There is case-by-case sort of issue that we work through. It depends whether it has been publicly prosecuted or private litigation, as to whether we are aware of it. But broadly speaking, we are looking at the pattern of behaviour, mitigations that have been put in place, and the code is trying to raise the standard of businesses that are doing work. So, we would consider it in some form, but it would depend on what the level of penalty is that is applied by the registrar, if any.

MS CARRICK: Which functions of the Secure Local Jobs Code cannot be effectively performed through existing workplace safety and procurement legislation?

Ms Stephen-Smith: I guess it is the pre-certification process.

MS CARRICK: Yes, aside from that.

Ms Stephen-Smith: That kind of is the point of it.

MS CARRICK: Alright, so why do we have all the compliance stuff in the registrar's role, if there is no difference? Because this is one of the major things that they keep talking about, the duplication of WorkSafe and so on.

Mr Wright: As registrar, my compliance powers are limited to code requirements, for example, that subcontractors performing territory-funded work are code-certified. I do not have powers to investigate alleged breaches of non-compliance with other

legislation, such as work health and safety laws or fair work laws, and therefore I am reliant upon those bodies to do that.

Where we do get those things come up, I refer those matters to the relevant regulatory authority responsible for administering that legislation—that might be the Fair Work Ombudsman, that might be WorkSafe ACT—and we do do that.

MS CARRICK: Okay, what evidence demonstrates that certified businesses perform better than non-certified businesses in relation to workplace compliance?

Ms Stephen-Smith: If I can just say in relation to the previous question, and maybe it goes to this one a little bit, I recognise the point that people are making about potential duplication, but one of the challenges we face is this is part of our procurement system, and what we really want to do is ensure that the businesses and organisations that we procure services and construction from are meeting their legal obligations.

This provides a process for us to have one central point of contact, one single certification system and one single compliance system within the individual contracts. SLJC-certified organisations would be required within their contract with the ACT government to maintain their SLJC certification and, you would hope, to provide the directorate—with which they are contracting—information if they are in breach of their code requirements or if their code certification is suspended, anything like that. That means there is one central point of contact in the ACT government maintaining an oversight over compliance with work health and safety and particularly Fair Work obligations, rather than every procuring entity—so every single directorate—having to maintain that watching brief on all of the organisations with which they are contracted.

Yes, it requires resources to oversee the implementation of the Secure Local Jobs Code, but it also means we have an assurance process that does not require every single directorate to be duplicating that work, particularly if they may be contracting with the same or similar organisations.

MS CARRICK: That is interesting that you used that language "watching brief". You could centralise the watching brief of looking at who has breached regulation, and have a list of people that have breached, and the centralised area could have a look at these companies that have been found to breach regulation. That is different to having a whole certificate process.

Ms Stephen-Smith: The difference is that having the certification process then means that you can put that into your contract to say, "You must retain your code certification, and there will be consequences if you do not do that."

It is much more complicated to say, "You must comply with all of your fair work requirements, and this is the threshold at which we will say we are going to cancel your contract, or we are going to issue a penalty if you do not."

This process creates an opportunity to have breaches or sanctions or penalties issued that would be very difficult to achieve without an actual certification process if it were just left to each individual directorate to try to implement some kind of sanction within their contracts for the delivery of service.

MS CARRICK: Does the dashboard tell us how many companies you have issued a breach to, from the point of view of the Secure Local Jobs Code?

Ms Lukins: In the dashboard, in the same section of the code breach, in that top right-hand corner, it does have the number of investigations resulting in sanctions.

MS CARRICK: Okay. When it comes to security of jobs, what is the ACT government doing to make sure that community organisations have funding in place, so that they do not lose staff because of the uncertainty of funding arrangements?

Ever since I have been in the Assembly—for two years—community organisations have said, "The budget is so late in June. We are not sure about our funding, and because of the uncertainty, we find it really hard to hang on to staff." Isn't that a classic contributor to unsecure jobs?

Ms Stephen-Smith: Yes, absolutely. I agree with you, Ms Carrick. This has been a challenge. It has been a challenge for the entire time that I have been in the Assembly as well. That is why part of the commissioning process has been seeking to move towards longer contracts with our non-government providers, particularly our community sector partners, and then also trying to change those timelines so that we can ensure that certainty is provided earlier.

We have certainly improved that even in the last couple of years and have made commitments in relation to upcoming budgets. One of the things that we have been looking at in that context is: are there ways that we can bring things forward through the mid-year budget review process that look at funding beyond 30 June? So, we are not necessarily using that process for funding in this financial year, but we are actually using a process either early in the budget process or through mid-year review, to provide that certainty.

It is sometimes simply the case that it is actually a delay in the procurement or commissioning process rather than a delay in funding certainty which also results in uncertainty of ongoing contracts. That is the other side of it which we have been trying to address. But certainly, where there are funding cliffs, we are very conscious of seeking to address that, and I think, in the last couple of budgets we have addressed a lot of the potential funding cliffs.

Mr James: Could I just quickly, in relation to the question on notice, put some data up there. In relation to the code certificates that were rejected: last financial year, there were four code certificates that were rejected after we received an audit report saying they have met the requirements; and for the same time frame, we were notified twice by an auditor that they had rejected an application. In terms of those applications or audits, they do not just look at the breaches; it is about the business showing evidence that they have met the requirements of the code, so there is a range of information that they have to provide to demonstrate that.

MS CARRICK: Can you tell us, for those four and two, for what reason did they not get their certificate?

Mr James: I would have to take that notice and get more detail.

MS CARRICK: Yes, that would be great to know why they did not get their certificate.

THE CHAIR: Thank you very much. As you all know, for questions taken on notice, please get them to our committee secretary within five business days from receiving the uncorrected proof. Other than that, have a great afternoon. Thank you very much.

Hearing suspended from 12.05 to 1.02 pm

BERRY, MS ASHLEE, ACT and Capital Region Executive Director, Property Council of Australia

THE CHAIR: We welcome Ms Ashlee Berry from the Property Council of Australia, who has come here to give us evidence in our inquiry into the Secure Local Jobs Code. Please note that, as a witness, you are protected by the parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If you have an opening statement, are you able to table it?

Ms A Berry: I do not have one. I am happy to go straight to questions.

THE CHAIR: All right. I will start. What obligations in sections 13 to 15 of the code add to or duplicate national industrial law, and what legal or compliance cost evidence supports your proposed changes?

Ms A Berry: Thank you, Chair. The issue that we have with those particular sections of the code and the code in general is that it is essentially a law that says, "You must comply with a whole bunch of other laws." In some parts it gets quite prescriptive as to how you need to comply with those laws. There are many various ways in which you can comply with laws, but it gets quite prescriptive. If you have a small business in particular, you are going to read that and think, "This is how I need to do something in order to comply and get my code certification to do ACT government work." The issue around sections 13, 14 and 15 in the Secure Local Jobs Code is that they create what we would see as greater access to union officials, above and beyond or in a different way to the Fair Work Act. It creates a certain level of obligation, particularly on small businesses, who often do not have in-house HR and do not have in-house people who have the skills to do it. They often have under 10 employees, if not fewer, so they are pretty small. It creates a system where they need to record. They need to go through it. If they are a member of an industry association, they may be able to get assistance in that way, but not everyone is, so they cannot access that; they do not know what to do.

That is probably the biggest issue that I have known with the Secure Local Jobs Code since its inception many years ago. I am old enough to remember the very first drafts of the code. That has been a consistent theme. It creates an obligation whereby a small business needs to go above and beyond what the Fair Work Act says or what any other legislation says—and I am being anecdotal here—to invite a union into their business at times when, potentially, the workers do not want it, and, if the workers do want it, there are mechanisms under the Fair Work Act and other legislation for it to take place.

THE CHAIR: Are there any mechanisms now for small businesses to provide this sort of feedback to the regulator responsible for the Secure Local Jobs Code? Do you know?

Ms A Berry: I am sure that there are ways in which a code-certified entity, or any entity, could reach out if they knew where to find the registrar. I am sure that, on the website, there would be ways for them to say, "I've got concerns about this," or, "I'm not sure how to comply." It is another barrier. This is the problem and where I am really focused. At the moment, we are fighting for investment, we are fighting for capital, and we are fighting for labour and skills, and, if we keep putting up unnecessary barriers, we will simply miss out. There are some barriers that we probably should be putting up. We

want to make sure that, from a taxpayer perspective and a ratepayer perspective, any contracts that are being awarded are going to people who pay their staff appropriately and on time. And, not to forget, there are federal government wage theft laws to comply with, but we need people being paid, we need safe work environments, and we need people who pay their subcontractors and other agencies on time. That is really important. We need to make sure that, as a bare minimum, that is what we are doing, but I think we are putting up barriers that go far beyond that and we are losing out as a territory.

THE CHAIR: You have the costs of compliance in the submission, but, beyond that, what are the other costs associated with being compliant with and applying for Secure Local Jobs Code certification?

Ms A Berry: It is about getting an audit in the first instance. It is not just about the fees. The fees are one part of it, but it is also about the time that businesses need to take to collate. Some payroll or other accounting services or online systems may be able to automate some of that for people, but not perfectly. It is not just automatic. That is the first part. It is about ongoing compliance as well. A problem that we spoke about in our submission—which I think is the bigger issue across the board for procurement in the ACT—is that people need to provide the same information, not just to different departments but also often to the same department on multiple occasions. There is no way that departments or projects can share information that would enable a small business to essentially say, "I've provided this already. I have this report done," or, "Please see the latest certification report that I've done on this project or this tender." That takes a lot of time. It is a lot of duplication. Some of these need to be customised, and they should be. We do not just want a tick-and-flick exercise, where someone puts in a plan and says, "This is my plan for the next five years," and they leave it. But that is not what is happening. We need to make it easy for people to put in a plan, be able to comply and be able to update it, and for government to not keep asking for the same information over and over again.

THE CHAIR: It sounds like a portal would be ideal, where all that information is stored and your responsibility is to ensure that it is up to date every time, and then to add additional information, depending on the procurement you are going for. That would save a lot of time.

Ms A Berry: That could be a great solution to needing to continue to update it. Often documents are sent in. Sometimes there is a bit of lack of communication or miscommunication between the project officer's procurement and what actually needs to happen, so people send in reports and are asked, "What's this for? Why are you sending this to me?" We almost need to get back to basics. There have been changes. I have seen Infrastructure Canberra slowly trying to get rid of some of the red tape, and there have been forums and discussions. Is that moving at the speed I would like it to? No. I think there is a genuine commitment to try to remove some of that red tape, but we need to do it. Otherwise we will start to lose good companies and good personnel, because it becomes too hard to tender for ACT government work.

THE CHAIR: Obviously, all this cost burden adds to the cost of the project itself and then impacts the end user or the consumer, potentially.

Ms A Berry: There are two parts to that. It is not only added to the project cost, because,

when a builder, a developer, a contractor or an architect is thinking, "I'm pricing this for the ACT government," they will factor in what their bureaucratic and administrative requirements are. So ratepayers are paying for it on that side of things, but they are also paying for it because we have ACT government personnel working on this. That is a cost as well. I am sure there are other things that we could be getting them to do rather than checking paperwork over and over again.

THE CHAIR: Of course.

MS CLAY: Ashlee, one of the things you have in your submission is a need for a single formal channel for complaints and procedural fairness for tenderers. Tell me what changes you would like to see about that.

Ms A Berry: When it comes to the Secure Local Jobs Code, all of the complaints would go to the registrar, and those complaints can be made by industry participants or anyone, realistically; it is open. That is around Secure Local Jobs Code compliance. But we often hear—and this is anecdotal, but I hear it from members—that the Secure Local Jobs Code and procurement can go hand in hand. Often issues around procurement are raised that may impact their Secure Local Jobs Code certification. It is unclear whether they are comments or that they are marked down on a Labour Relations, Training and Workplace Equity Plan. That is just one of the requirements. There is not necessarily an appeals mechanism or an opportunity for clear feedback on all occasions. It is about: how do we have a procurement system that is clear and fit for purpose?

We are a small jurisdiction and I think we have overcomplicated it. Perhaps we could almost get back to basics and have a procurement system for the ACT government whereby, if you have a complaint or want to raise an issue—whether it is around how you have been assessed on something or whether it is because you think something untoward has happened, whether that involves your project or another project—there is a really clear way, a clear channel, that everyone knows about.

MS CLAY: That is a complaint to the registrar? Did you have in mind who that would go to?

Ms A Berry: We did not specify because, ultimately, it would depend on whether the Secure Local Jobs Code is in force or not. It is a bit tricky. I know there have been calls for it to be abolished. Ultimately, our position is that there need to be some efficiencies. It needs to be a procurement system that works for government but also works for industry. At the moment, I am not sure that the Secure Local Jobs Code or procurement is actually delivering for either. How do we remove all the unnecessary red tape and still make sure that we are giving the territory value for money, and make sure that people who get contracts deserve to get those contracts? Also, how do we accept that sometimes decisions may be wrong or issues arise that the government needs to be made aware of? If there is a safety complaint, that should go to WorkSafe; it should not go to Procurement or to the Secure Local Jobs Code. But then there needs to be a mechanism where, if WorkSafe are receiving, say, multiple complaints about one player, they could raise that with the powers that be. In my mind, that is how an efficient system would work, rather than there being an obligation to report it to every single procurement body or authority.

MS CLAY: Sure—information sharing.

Ms A Berry: Absolutely.

MS CLAY: There has been a lot of commentary that the Secure Local Jobs Code is not, in fact, doing much for local jobs. We heard different evidence from the minister. On the figures, the government's local procurement spend dropped from 54 per cent six years ago to 34 per cent recently. The minister's view on that probably differs, but we have heard from multiple witnesses that there are people who are bringing in fly-in, fly-out work crews in the construction sector and that a lot of our procurement is not going to people who live here. Is there a problem if our ACT government procurement wealth is leaving the ACT more than it needs to? And is there a problem that we are not building up the skilled worker pipeline of people who are actually local?

Ms A Berry: I think both are issues. We can have a balance between local businesses, local employment and also growing and bringing in new businesses to the territory in the hope that they stay. The more the merrier. We need to be able to attract talent and competition. That is not bad, but we cannot do that at the expense of businesses who, particularly in the construction industry, have been working here, living here and giving back to the community for generations. That balance has been lost.

I have not seen the figures that you refer to from the minister, but the make-up of the construction projects in particular may impact that split. We have certainly seen over the last few years that there has been—I would not call it a consolidation, but some very big projects have taken up a lot of the capital works expenditure, and so, just by virtue of that, I would not be surprised that there has been that reduction from, say, 50 or 60 per cent down to something in the 30s. That does not surprise me. But we need to make it as simple as possible, particularly for small businesses to do work for their local territory government. It seems crazy that we are not doing that and we are not incentivising that. The Secure Local Jobs Code really is a misnomer in that sense. It was never around, "Let's create local jobs"; it was around making sure that people who were working across certain industries were being paid. It has more of an audit function as opposed to, "We are here to promote local jobs." That lack of understanding of what it actually is—a procurement code—still persists because of the name.

MS CLAY: I think that is right. Ashlee, a number of witnesses have suggested that the Secure Local Jobs Code simply duplicates a regulatory system that the federal government has already created, mostly the Fair Work legislation. We also had other witnesses come in and tell us what the impact is when they can directly access rights at the ACT level. The best example was that one of our unions came in with some migrant and refugee workers, and they had a case of wage theft. It took them several years to take that to the Federal Court. They got a $300,000 damages payment, but that took a long time. They had to get lawyers. There were a lot of barriers in the way. One of their colleagues passed away before the payments came back. On the ground for a lot of people, certainly in vulnerable industries, there is a benefit in having a local ACT-accessible version of those rights. What is your take on those two different perspectives?

Ms A Berry: There are examples like that, where takes several years to get federal government intervention and penalties, I would question whether the code could

actually give them the compensation that they otherwise should get under wage theft laws or whether it is used more as a stick to the offending employer, to say, "You either need to pay or you're probably going to lose your ACT government contracts."

MS CLAY: The Secure Local Jobs Code would probably not be used to get damages. It would be used to make sure the companies are not exploiting their workers in the first place.

Ms A Berry: Absolutely.

MS CLAY: It would be the preventative step so that you do not end up in that situation.

Ms A Berry: I am not always sure it does end up being a preventative step. That is the problem. There is already some pretty serious commonwealth government legislation. Wage theft is now a criminal offence. If someone is willing to do the wrong thing and go against those obligations, they are probably not going to take too much notice of a procurement code. One of the challenges that we have in all of these scenarios is that we are designing something to punish, let's say, the bottom five to 10 per cent, and it has some pretty serious consequences on everyone else doing the right thing. The majority of employers go above and beyond to pay their employees on time with complex wage systems, in terms of the award. It can be quite complex, and so can enterprise agreements. There is a lot there. The majority do the right thing. A lot of them have very longstanding employees, particularly across property and construction, but also across the board.

I am not sure that the code actually achieves what it needs to. Does there need to be some other mechanism where you have someone with an ACT contract and there is action under wage theft? Does there need to be a way in which it can be alerted to the ACT government, with some potential consequences? Sure, but I think that could be included in contracts. It could be included in awards for future projects, where, from a procurement perspective, in determining whether to award a contract to XYZ contractor, the ACT government must take into account any findings against them, regarding all of the laws that they should otherwise comply with. I would have thought that is one way of making sure that people are complying and that there are repercussions and consequences under contracts if someone is found guilty of breaching those laws.

MS CLAY: Thank you.

MS CARRICK: Along the same line, it seems to me that the Secure Local Jobs Code is made up of two parts. There is the certificate at the beginning and then there is compliance. However, we found out from earlier witnesses that compliance is not against WorkSafe or Fair Work; it is really just about compliance with the certificate. If there is some sort of WorkSafe issue, they will refer it to the appropriate regulator. Also, I am pretty sure I heard that these regulators have published lists of people in breach of the regulations. Could an industry part of the public service or the Secure Local Jobs Code people maintain a list of companies that are in breach—pull it all together so that you do not have every directorate and everybody else trying to go to every regulator and find out if somebody has tendered for something and they are in breach? Could the government pull together people who are in breach and then say, "For this reason, you need to be wary of this company," or, "This one was in breach,

but it's okay. It's all resolved. It's been worked out. They're good to go"—rather than putting the certificate across everybody, just deal with the five per cent that have concerns and work with the directorates when they are procuring around those companies?

Ms A Berry: I would have thought that is something that could absolutely be explored. I remember, quite some time before the Secure Local Jobs Code was introduced, that was almost what happened. There were some issues around transparency. I cannot recall exactly how it happened, but, if you put out an alert to say, "Please let us know if there are any issues with XYZ contractor," you either do not get any because they are a preferred contractor even though there are issues, or you get spurious issues raised that are not significant. On the basis of that, it came to: "Do we need to codify this?" The problem is that the codification has gone well above just that sort of check. There should be almost a compliance check. It happens if you go to get new finance. Banks and financial institutions will do a check on you. It happens—

MS CARRICK: They can do credit checks. Can they do compliance checks?

Ms A Berry: Absolutely. In a law firm, when you get a new matter in, you do a conflicts check. It is sent out and is checked against systems. I think having something like that would be entirely appropriate. I am sure that there are people far smarter than me who can design a system that does it almost electronically, without the need for human interference, because that is what we do not want to happen. We do not want to have people saying, "Actually, I don't like that contractor because we had to pay them damages last time," or, "We had to do this"—whatever it is. We need to remove that from it, and we need to have it really transparent—"This contractor was found underpaying staff," or, "This contractor has breached their WHS obligations here in the ACT." That is ultimately what should be checked and people should be held accountable. If there is a consistent history of non-compliance, then the territory should be saying, "Why do we keep giving them work? Why do we keep using territory-funded money to keep this going?"

MS CARRICK: Would it be possible for that sort of system to replace the Secure Local Jobs Code, if there were some area of the government that was managing checks for compliance?

Ms A Berry: I would have thought so. Ultimately, the goal of the Secure Local Jobs Code is to make sure that the government is giving work to compliant and reputable businesses, whether they are local or not, and people who are doing the right thing by creating a safe workplace. If you have the ability to check, that would be appropriate.

MS CARRICK: Would you still need the certificates?

Ms A Berry: There are pre-qualification requirements. The ACT government has so many requirements. There is the Secure Local Jobs Code, and then, once you get to contracts at a certain level, they require you to get pre-qualification. There are panel applications. There are labour relations plans. There are local industry participation plans. There is a lot. Surely there is a way that can be brought together. I would have thought that government would still want a smaller form—almost a pre-qualification. That does not need to be excessive, and it certainly does not need to be the extensive

audit that we see is required, where you go through a significant number of payslips of past history.

MS CARRICK: Perhaps a pre-qualification could include the compliance checks and a few things that are appropriate without the extent of what it is today.

Ms A Berry: Absolutely. To add to that, ongoing monitoring is probably the other part, and doing it in a way that is not onerous on either government or business. The last thing we want is a business being audited every day, because that just takes their time away from actually delivering the work and delivering the contracts that they need to. But there could be spot checks. Ms Clay spoke about complaints. If there is a proactive way that a registrar or a procurement lead, or whatever this looks like, is being a bit proactive, that may also reduce the significance of any potential underpayment, because they could catch it before it exacerbates.

MS CARRICK: I think they do that with food safety. They do spot checks at restaurants, don't they?

Ms A Berry: Correct. We do not need to re-invent the wheel on these things. We have regulatory systems, some which work far better than others, but I think it is clear that this is not working from an industry perspective, so we need to look at all options for how we can actually make it work for everyone.

MS CARRICK: Ongoing compliance or checking was raised. You get your certificate and then it is a bit like set and forget—nothing happens. You could breach three months later, but no-one would know because you have your certificate, so you can keep putting in for tenders.

Ms A Berry: Correct. Unless there is a complaint and then an investigation, it is set and forget.

MS CARRICK: With the current scheme, there are quite a number of exemptions. Are there any of the existing sectors—for example, very small sectors, community groups and landcare groups—where you only have a couple of people who might, through volunteers, pick up big contracts, million-dollar contracts, and they are caught in it with just a couple of people? Can you see a requirement for any further exemptions?

Ms A Berry: Not from my perspective. The exemptions and the fact that we need to have exemptions shows that this is not necessarily a fit-for-purpose procurement model for the ACT. There needs to be a way that is again transparent, because we need to make sure that we are not letting things go because it is too hard, but we need to get the right people to do the work—people with the skills—and we do not want to be overly bureaucratic just for the sake of it. As you said, if you have volunteer organisations trying to do things or you have smaller entities—in some instances, we know that there are specialists who do not often operate in the ACT that you need to bring in for certain things—we just need to use common sense overall and look at the purpose. Why do we want an exemption? Do we need them? Can we get them? Are we still getting value for money?"

MS CARRICK: This is about Fair Work and the audit of wages. For work health and

safety, we have WorkSafe for the ACT. Do we have an equivalent ACT body that does the stuff of Fair Work?

Ms A Berry: Not that I am aware of. It is probably slightly outside of my day-to-day wheelhouse at the moment. If you are getting underpaid, say, for superannuation, you would go to the ATO. If you are not being paid appropriately, you would go to Fair Work. That would probably be the most appropriate place to go, or you would look at taking action yourself. Obviously not everyone is in a position to do that, but you would probably seek independent legal advice. There are a number of community legal services around the ACT that I know would often provide that sort of advice to people.

MS CARRICK: Thank you, Ashlee.

THE CHAIR: Ms Berry, thank you very much for taking the time to come in and provide your evidence. I do not think any questions were taken on notice today, so you do not need to comply with that. Have a good afternoon.

Hearing suspended from 1.34 pm to 2.04 pm.

CRIMMINS, MS FRANCES, Chief, Executive Officer, YWCA Canberra
DWYER, MS LEAH, Director of Policy and Advocacy, YWCA Canberra

THE CHAIR: We have Frances Crimmins and Leah Dwyer from the YWCA Canberra. Please note as witnesses you are protected by parliamentary privilege and bound by its obligation. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. We have not been doing opening statements, but if you have got one, if you are able to table it, that would be great, if you are happy to do so. Do you have an opening statement?

Ms Crimmins: Yes. We are happy to table it.

THE CHAIR: Because then we can get straight into questions, and you might be able to refer to some of that already.

MS CLAY: We have had some evidence from the community sector that the Secure Local Jobs Code has been difficult to comply with and maybe was not best tailored for the community sector. We have heard similar evidence from witnesses in small organisations that it is not great for that. We have also heard pretty strong evidence that the standards should apply to everyone. I am wondering if you have got any views on the suitability of this in its application to the community sector.

Ms Crimmins: Yes, we do. We do not think that the Secure Local Jobs Code in its current form is relevant to the community sector. The community sector is contracted by the ACT government to provide services to some of Canberra's most vulnerable people, and our view is the best measure on who is fit to do that involves issues around safeguarding and the suitable entities. The Secure Local Jobs Code does not really touch on any of those elements. We also think that we have other regulations, as a community organisation, that would safeguard around employee wages and conditions.

To be perfectly frank, the biggest risk to secure jobs for employees in the community sector is the short-term nature of government contracts, not full indexation and not funding entirely what it takes to deliver a service, noting that often when a tender comes out it has a fixed price element, so it basically involves a race to the bottom. That is our view. There are very few community service tenders issued by the ACT government where there is no fixed price attached to it.

MS CLAY: We have put this to the minister. A number of witnesses have also said government could fix the difficulty for the community sector in complying with the Secure Local Jobs Code by paying the community sector properly and by also having an indexation that recognises the genuine costs of labour going up and also the genuine administrative costs of procurement. The minister seemed sympathetic to that and said that they were already looking at the indexation rate—your face is priceless, Leah. The minister said they are already looking at changing the indexation rate, increasing it, for the community sector, so that was promising. She also said that it is up to the sector to tell government what the true cost of services is and bid for that. I challenged her on that and said, "But often the sector is told, 'Here is the funding window,' and I think it is quite difficult to bid outside the funding window." Do you have a view on whether the better approach would be to give the community sector or small businesses an easier pathway to compliance or for government to provide proper funding to the community

sector so that compliance is not as much of an issue?

Ms Crimmins: For an organisation like YWCA, we will always be able to tick the box to comply. What our evidence is showing is we are not seeing what difference it is making to the services provided to the community. In fact I have concerns that as a procurement process from the Health and Community Services Directorate it is just used as a "Do they have Secure Local Jobs Code?" tick, and nobody does a detailed analysis of that organisation's capability and capacity to actually deliver a safeguarded, quality service to the Canberra community. I think it is providing a false assessment of that, because that is not what the Secure Local Jobs Code is designed to do.

MS CLAY: You also made some comments on the make-up of the advisory council. Can you tell me what you think you would like to see on the advisory council?

Ms Crimmins: If we are to be continuing with the Secure Local Jobs Code for the community sector, I am surprised that the council does not have anybody with any expert knowledge of the community sector on that advisory council. I am not quite sure what the council's oversight would be to ensure that there is any benefit to vulnerable Canberrans getting support from a Secure Local Jobs Code-ticked accreditation when nobody on that council has any knowledge or expertise of community services.

MS CLAY: We have got on the council an ASU representative at the moment, but are you talking about more having ACTCOSS or a—

Ms Crimmins: Yes.

MS CLAY: If ACTCOSS or somebody like that were on the council.

Ms Crimmins: Yes. I see there are business representatives and construction representatives, but there is nobody from the community sector.

MS CLAY: No, there is not. The only employer organisation representatives are MBA and Canberra Business Chamber at the moment. There is certainly not the community sector.

THE CHAIR: It could be a thing to consider.

MS CARRICK: Just while we are on this line of questioning, with the fixed price contracts, are community organisations at risk of larger organisations and even interstate ones having the greater capacity to put in for tenders because they have got the economies of scale, they are bigger, they have got bigger admin and are more polished in areas?

Ms Crimmins: I think that depends on the service being provided, and our concern is that the Secure Local Jobs Code does not ensure locally registered community organisations. Anybody can get that accreditation. When we see national entities whose head office is not based in the ACT and operating solely in the ACT, where is the recourse then for vulnerable people in terms of governance and accountability? The biggest risk to vulnerable people is governance and safeguarding oversight. If you are not a community organisation who is registered in the ACT, operates in the ACT, whose

sole mission is to serve the ACT, the Secure Local Jobs Code does nothing to provide that certainty for the community members who would use our services.

MS CARRICK: Then capacity building—if the bigger organisations from interstate can win a tender, does that impact our ability for local organisations and the capacity building within Canberra?

Ms Crimmins: Absolutely. I think that would apply to small business as well as community organisation—any business—in terms of building the capacity. There are some great niche local organisations here in the ACT. I think maintaining a healthy ecosystem of those niche multiple providers is a really good outcome for community services and representing the diversity of our community in the services they provide. I think the fixed-term contracts may seem to be more appealing to national entities who might have economies of scale. I would not classify YWCA as being that large. We are large in a Canberra context, but certainly not the multi-hundred-million dollar entity that some of the larger national organisations are. What we are, though, is here, local and accountable to the community.

MS CLAY: We have heard a lot of evidence—this has been in the public domain too—that the Secure Local Jobs Code is not in actual fact intended to provide for local jobs. We have heard a bit of evidence that New South Wales councils, for instance, give a higher weighting for local tenderers than ACT does. Do you think there is benefit either through the Secure Local Jobs Code or other means through procurement to give more weighting for local jobs, local workers and local capacity building to make sure that our contract money is not leaving the state but also that we are building up our people who remain here?

Ms Crimmins: Absolutely. I think building local capacity is vital. I will give another example. We have to have the Secure Local Jobs Code to apply for a licence in before- and after-school care. Unfortunately, we have seen some not-Canberra-based for-profit entities who have been awarded some of those licences to operate. If you look at some of the incidents that have occurred in children's services with the regulator, they tend to be those entities—again, no accountability. They are not even here. Here we are taking money from local Canberran families in our local schools, and it ships interstate. When things have gone wrong with the regulatory framework, there is not anybody here from those entities to take account for that. That is another area where we have to have Secure Local Jobs Code. We are not actually getting money from the ACT. What we are get getting is the licence to operate in our public schools. I think it should be, again, local not-for-profit community providers providing that in partnership with schools.

Ms Dwyer: There is a weight given to local providers and procurement, but to what extent it actually has any influence is—

MS CLAY: I think the evidence we heard was ACT is giving it about a 10 per cent weighting and New South Wales councils are doing 15 to 20 per cent. There might be other ways in addition to that to encourage more local procurement. I think we are probably already behind what our counterparts are doing.

MS CARRICK: I have a question about who regulates the community sector. I know

that there is the early learning regulator, but when it comes to other community services, like workers in the domestic violence sector or the rape crisis centre, there is a whole range of community organisations. Is it Safe Work them that regulates the sector? Who does regulate it?

Ms Crimmins: The Australian Charities and Not-for-profits, ACNC, is the overall regulator. There is the children services regulator you mentioned, CECA. There is also the ACT Human Services Register, which sits in Health CSD, which is the regulator that oversees anybody delivering support for out-of-home care services. We elect to be regulated via that even though we are not exclusively delivering out-of-home care, but we have vulnerable children in our care, which is a decision our entity takes. There is also the community housing regulator, which also sits in Health CSD. There are numerous regulators. It depends on the make-up of your organisation. For example, we are an RTO, so we have also got that regulation.

In terms of safeguarding wages, the community sector is covered by the SCHADS Award. That has had its equal remuneration order. We are also covered by the Children's Services Award, and that is also had the Fair Work gender evaluation applied over that. Anybody delivering services in this sector is covered by an award. I would say the mechanisms that Fair Work have to monitor and make sure you pay award wages are already in place.

MS CARRICK: A lot of the reason for the code certificate at the beginning is to weed out bad operators. Has that happened, do you know, in the community sector? Has the Secure Local Jobs Code compliance regime weeded out people before they—

Ms Crimmins: Not to our knowledge. We do not know anybody who has been declined a Secure Local Jobs Code.

MS CARRICK: Are there any advantages at all for your industry?

Ms Crimmins: We, as our submission said, cannot see any advantages to our sector and think that the mechanisms that cover Fair Work—we have now moved to payday super. We are an award-based sector, where you will find most community organisations are on an enterprise agreement with higher terms and conditions, but at a minimum, when we submit our tenders, we have to reference the awards and what rate we are employing people on. That is outside the Secure Local Jobs Code. We have to demonstrate we are employing people and paying the award rate, if not more.

MS CARRICK: When the government goes to tender, could there be a mechanism that there is a central part of the government that does keep an eye on all the registers? Do those regulators have registers of anybody that is in breach?

Ms Crimmins: I am not sure, but we have to regularly provide, once you are a contractor, all of our financial statements, all of our insurances, our workers compensation insurance, our public liability insurance and acquittals against each grant. I am not quite sure what would not be covered in that process that occurs annually. It is an annual reporting requirement.

MS CARRICK: Potentially the regulators could let the governments know where they

do have somebody that is in serious breach and to keep an eye on when they are procuring. Could that be an alternative to going through the whole code process?

Ms Crimmins: Yes. I am not sure why when you submit your tenders that you are required to indicate the awards. The government always has a right to come in and inspect if they have concerns, so I am not quite sure what the Secure Local Jobs Code covers for our sector that is not covered by the other reporting mechanisms.

MS CARRICK: When you submit a tender, is there a box that says, "Have you ever been in breach of any regulation"?

Ms Crimmins: We sign a declaration to say everything we are submitting is true.

MS CARRICK: Do you have to say that you have never been in breach? Say you were an entity that had been in breach of WorkSafe or the child regulator, would you have to say that you have been in breach on your tender?

Ms Crimmins: I will have to take that on notice, but I am fairly certain every time we do have to indicate up front if there are any actions against us, and we also have to be compliant with the workplace gender equality compliance report. That covers things like if there was reported workplace sexual assault, which is also now reportable to WorkSafe ACT. Again, there are other mechanisms in place around appropriate workplaces and appropriate employment practices for staff in the community sector.

MS CARRICK: Once you have got your Secure Local Jobs Code certificate, do you ever hear from them again until you renew?

Ms Crimmins: No. That is basically until we renew. All I am checking for is that we have got it when we do tenders. We do our renewal every two years and provide the exact same documentation: our approved enterprise agreements and all of our insurance certificates, and we disclose if we have had any Fair Work cases against us.

MS CLAY: On the issue of whether to better pay the community sector, exempt the community sector or provide a different pathway, the ASU gave pretty clear evidence that they did not think the community sector should be exempted, but they like the idea of proper government funding for the community sector, proper indexation, or if there is a simpler administrative pathway, they thought that was a good idea. Their view on not exempting the community sector is that there are a lot of vulnerable workers in the community sector—carers and cleaners and other people—so they thought actually they needed the protections of the Secure Local Jobs Code as much as other sectors did.

Ms Crimmins: Cleaners are not covered by the ASU. Are you talking about the UWU's evidence?

MS CLAY: ASU. I was talking about carers and community service workers. Their view was that a lot of that cohort are quite vulnerable workers. You have probably also got the things that you are looking for as risks in other workplaces—English as a second language, migrants, refugees. Have you got a view on that? Their evidence was quite clear. They said, "We come in, and we have a different view from the community sector submissions that you have, but this is our view and this is why it is."

Ms Crimmins: I think there are mechanisms that keep employees safe. As I said, they are employed under awards, modern day awards, and most of the organisations that I am aware of have overarching enterprise agreements. Most of the awards would have union access, so I am not seeing the correlation between vulnerable workers not being supported by the Secure Local Jobs Code at all.

MS CLAY: The example we got, not in the community sector but in other sectors, was that whilst there is a regulatory framework of Fair Work legislation and awards and things like that, it can be difficult for people to access. It might take years for them to get a damages claim—they need to get a lawyer, and they need to get union advice—whereas the Secure Local Jobs Code is seen as preventative at the outset, and people will not end up getting exploited or having wage theft at the outset. Have you got a view on that difference?

Ms Crimmins: Again, I do not see how the Secure Local Jobs Code would stop that. I think if wage theft was going to occur—we see it happening all the time with carers. I will not name them, but there was a recent organisation that just had to do a backpay who employs that group. I am sure they would also have the Secure Local Jobs Code. I do not think the Secure Local Jobs Code is giving any certainty that an employer will not on purpose or accidentally underpay somebody. There are I understand complexities in awards—overnight sleep. Some of those awards have different rates. There are complex awards, but I am not seeing that the Secure Local Jobs Code is stopping that at all. I have never seen any evidence of it stopping that.

MS CLAY: What do you think it is doing at the moment? What is it achieving at the moment?

Ms Crimmins: I think it is achieving me paying somebody to give them documents so I can meet a procurement threshold that says I must have this.

Ms Dwyer: I think our submission talked about the differentiation between, say, for example, the construction sector, where you might have a FIFO workplace and evidence of undercutting is higher, as opposed to a locally based community sector operation which is compliant and responsive to the existing national regulatory framework and ACT framework and whether on balance there is a necessity for the code to apply to both those sectors equally when perhaps breaches and noncompliance are more relevant in one sector.

Ms Crimmins: I do not know anybody in the community sector who uses labour hire.

MS CARRICK: What alternative mechanism would prevent government contracts from being awarded to businesses or community sector with poor workplace compliance records?

Ms Crimmins: I think government actually reviewing contract service delivery outcomes. As I say, commissioning for services and focusing on safeguarding and quality is where the focus should be. If that is as a result of not having and paying staff with the appropriate qualifications at the appropriate rates, that would come through any safeguarding and quality issues.

THE CHAIR: How often are the minimum wage standards changed? How often are they changed? You have got to be up to date obviously and update your staff salaries and everything else.

Ms Crimmins: That happens annually for our sector. Because our sector, the SCHADS, children services, disability and aged care already had theirs, they had the gender undervaluation and went through Fair Work. That is occurring up until 2029, which is the second equal remuneration order for the SCHADS-based employees.

MS CARRICK: I do not know if it is called wage theft. It could be an accident if people are not paid properly. It does seem to happen reasonably regularly. You see it in the news. Are there good enough mechanisms to report it? Is there a power imbalance? If somebody reports it, they feel that their job could be on the line. It is a bit like whistleblowing. Are there protections in place for people to report underpayment?

Ms Crimmins: You would have to ask employees that question. From our workplace perspective, we would like to believe that we have a culture that people immediately go to our payroll people if they feel they have been underpaid. I think most people are aware of the mechanisms of being able to call Fair Work—that is my experience—and the Fair Work Ombudsman for advice or being a member of the union for advice.

THE CHAIR: Thank you very much for taking the time to come in this afternoon and provide your evidence. I do understand there has been a question taken on notice. If you are able to provide an answer to that question on notice within five business days of receiving the uncorrected script, that would be really good. That would be appreciated.

BOWLES, DR DEVIN, Chief Executive Officer, ACT Council of Social Service

THE CHAIR: Good afternoon, and welcome, Dr Bowles. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

We have not necessarily been starting with opening statements. If you do have one, are you happy to table it?

Dr Bowles: Yes.

THE CHAIR: Excellent. We will go straight to questions. We might start with Ms Carrick.

MS CARRICK: Have any members identified tangible benefits from the code?

Dr Bowles: Nil. Not a single member, in my dealings with all our members, has spoken of jobs becoming more secure, more local or having enhanced outcomes for the people that the community sector serves. I should note at the outset that my remarks are confined to the application of the code to the community sector, which is an area where we have some expertise, and not to other sectors, where we do not have a similar level of expertise.

MS CARRICK: Are there parts of the regulatory framework that make the code duplicative?

Dr Bowles: Yes. Many of the organisations in the community sector are non-profit organisations and are subject to, for instance, ACNC reporting, which means that they have a level of scrutiny and public accountability that similarly sized businesses typically do not have. Additionally, many provide services to priority populations; therefore, they must undergo regular auditing against specific compliance codes to be able to deliver the services that they deliver. This is a sector which is already highly scrutinised and regulated.

MS CARRICK: Would a simplified pathway be preferable to a complete exemption? What would you prefer?

Dr Bowles: We believe that a complete exemption is appropriate because we are unaware of any benefits, and even a simplified pathway will have continued costs.

MS CARRICK: When it comes to secure jobs, the minister said that she was looking at more certainty in the budget. We have often heard that one of the most insecure parts of the community sector is that you do not know what funding you are having until the last minute, in June. Have you seen any improvement in that?

Dr Bowles: Yes, we have seen improvement in that, but there is still significant space to continue to improve. I do want to acknowledge the government's efforts around changing the timing of the budget and lengthening some contracts, in the most recent budget. Those were noted and very much appreciated by the sector.

I will add that the community sector does work which is relational. That means that, to do our work well, we already have an incentive to provide people with secure employment, because they will be more effective in their jobs if they are in it for long enough to build relationships with clients and with other service providers. The community sector really is an ecosystem of services, and the longer that people are able to remain in their roles, the more effectively they can connect between programs within an organisation and between organisations.

In addition to that, we are competing in large part with the ACT public service and the APS for employees. Typically, we are not able to offer the same salaries and, where we can, we like to be able to offer employment that is as secure as in the public sector, so we are highly incentivised to provide job security.

I would note that, while some for-profit industries may not be incentivised to do that, because they may want to reduce their workforces in order to maximise profit, the great bulk of the sector is not-for-profit, so that incentive does not exist. The set of incentives, we believe, already means that the sector, by and large, is highly motivated to provide the securest possible employment, given the context of government funding.

MS CARRICK: With for-profit organisations, we have just heard that, often, when they are in breach and things go pear-shaped—perhaps early learning—they are not here, if it is a national organisation, to be able to face the music or discuss what happens. With the code and bringing people in from interstate—interstate people or bigger Australian organisations winning tenders, as opposed to local organisations—does that have an impact on trying to build the capacity locally, if bigger national organisations are winning the tenders, and they are more able to meet the requirements of the code and provide polished tenders?

Dr Bowles: If national organisations that do not have a local presence are able to meet the requirements of the code, that begs the question: what is the purpose of the local part of the code? If it is to employ people locally, the nature of community services means that any provider will be doing that, because the work is largely relational and face-to-face, so it is not something that is easily outsourced to a factory in Brisbane.

If the intent is to have providers that are local providers, there are some definitional issues about what a local provider is. An ACT-based provider with its headquarters here, fairly obviously, is local. What about if it has headquarters here but operations also in New South Wales? What about if it has a longstanding presence here, operationally, in an area, but it has national headquarters somewhere else? Those, I think, are complicating matters.

It would be worth noting that, since the introduction of Secure Local Jobs, my impression is that long-established, clearly ACT-focused providers have felt under more contract pressure rather than less. I am not attributing that to Secure Local Jobs, but I am saying that Secure Local Jobs is not—

MS CARRICK: Securing local jobs.

Dr Bowles: It has not had the effect of prioritising local providers as it would most

simply be understood. Whether that is the point of the code and whether that is an objective that government wants is subject to question, but it seems not to be accomplishing that.

MS CLAY: We have heard a lot of evidence from different witnesses, some of whom want to get rid of the code, some of whom want to change the code, and some of whom want to just keep what we have. We heard from the ASU this morning, and they were strongly in favour of keeping the code, because they thought that it was important for protection of their workers. They essentially labelled their workers as a vulnerable cohort, as are the workers in many other unions.

For the community sector, there is a higher degree of migrants, people with English as a second language—the sorts of people who often get exploited. What is your view about that? They were more strongly in favour of, "Keep the code for the community sector, don't exempt the community sector, but let's make it easier. Let's give a different administrative pathway to the community sector that's more appropriate and let's fund the community sector properly so that they can comply." Do you have a view on that?

Dr Bowles: Yes. If it is to continue for the community sector, additional funding certainly would be appreciated. The first thing I would say is that, at least as far as non-profit employers are concerned, the risks to those employees are much less than with for-profit providers. One pathway of exemption potentially could be where you are registered with the ACNC or otherwise clearly a non-profit organisation.

Another remark I would make is that simplifying the code or simplifying the process of establishing that an organisation is compliant is better than not, but we are still unaware of any evidence that the code is doing anything useful. If you are weighing up the cost and the benefit, and there is no evidence of benefit, any cost means that we have the balance wrong. For that reason, we think it would be most appropriate to exempt the community sector from the code.

MS CLAY: Are you able to step me through what the protections are in the ACNC for people who work in the community sector?

Dr Bowles: ACNC reporting makes it really clear how many employees an organisation has, and how they are employed. Depending on the size of the organisation, the financials have to be reported, and the total amount spent on staffing, typically, is available publicly. There is an openness to the books of the non-profits that is certainly not true of most privately run companies. That means there is a pretty high level of transparency.

The other thing is that those financials also say whether there is a surplus at the end of the year. Typically, in the community sector, there is not, or it is not a huge one.

MS CLAY: No.

Dr Bowles: That gets back to the point that, on some level, government is already funding the cost of administering this, and it is doing that in that it is providing funding for services, and requiring organisations that administer those services to jump through some administrative hurdles, which has a cost, and that cost necessarily comes out of

the services that are delivered. We are not aiming for profits; we are aiming to maximise the services that we deliver.

MS CLAY: I asked Minister Stephen-Smith about the idea of government funding the community sector properly and giving an indexation to the community sector that genuinely reflected the community sector's increasing costs and the community sector's compliance burden for the ACT, and whether that would be a better way around the problem. She seemed to be open to it. She said she was looking at different indexation rates at the moment.

She also said that it was up to the sector itself, in the commissioning and contracting process, to tell government how much money it cost them to deliver, and she put that burden on the sector. I found that tricky, because often government will say what the funding window is, and I am not sure how open it would be to bid outside the funding window, if government said, "Here's how much money we have for this service," or, "We're not increasing funds in this area." Do you have any reaction to any of those aspects, on the indexation and on the ability to bid for what the services cost?

Dr Bowles: I do. My first point would be that that is not included in the indexation formula. Certainly, increased compliance costs are one of the sources of additional costs that the sector has experienced over some years that are not reflected in indexation. A move towards that would be very welcome. I would not say that commissioning has met its ambition of universally enabling organisations to re-cost services in a way that reflects true costs. I am sure there are examples where that has happened. Certainly, there have been areas that have been commissioned where the community sector has not felt this message from government: "Yes, if you want to put in for the same work you're doing, the funding envelope is the same and we're willing to accept 10 per cent fewer services for that money."

Also, organisations experience a moral imperative to do the most they can with the funding that they have, because the reality for them is, "Do I want to turn away 10 per cent of my current clients? Which 10 per cent of my current clients do I think would be fine without my services now?" The answer to that, typically, is "Well, none; and, in fact, we've got a waiting list." I would say that commissioning has not universally met the ambition of enabling a truly free re-costing in every subsector.

MS CLAY: With the make-up of the Secure Local Jobs Code Advisory Council, at the moment, we have the registrar, a representative of UnionsACT, CFMEU, ASU, the directorate, the MBA, and the Canberra Business Chamber. Do you think that body would benefit if it had a representative of the community sector?

Dr Bowles: If the community sector is retained. However, I think the make-up of that body suggests that, on some level, the code was never really designed for our sector. It was not focused on problems that were being widely experienced in our sector. I think the best thing would be exemption. But if exemption is not possible, certainly, having representation would be helpful.

MS CLAY: We have had a lot of discussion in the public domain and in this inquiry about whether the Secure Local Jobs Code does anything for local jobs. The government submission made it very clear that that was never its goal, and it certainly

does not do much for local jobs. We have also heard that New South Wales Procurement does a lot more for local jobs and has much better weightings for local jobs. We have seen that the ACT government procurement spend is decreasing locally; more of it is leaving the state. Do you think government can and should do more to keep more government money circulating within the ACT and build up more capacity of good local jobs so that people can stay here?

Dr Bowles: I am not sure how much those observations apply to the community sector. As I mentioned before, the nature of the work is that it is mostly local. Anecdotally, my impression is that probably there are more organisations with corporate headquarters outside the ACT that have won contracts than was the case five or 10 years ago. I would say that it does not seem to be focused on locally headquartered organisations. I will leave my remarks there.

MS CLAY: Your submission talked about the 2021 legislative review. Would it be useful if it was made public?

Dr Bowles: Probably, but until it is made public, it is hard to say.

MS CLAY: You do not know; yes.

Dr Bowles: Certainly, given that there is that information, and there is a lot of public discussion, on the face of it, having that discussion being informed by that review would be really helpful. In particular, our approach has been to say, "There seems to be absolutely no benefit in the community sector of Secure Local Jobs." If the 2021 review found a big benefit, that would be useful information that would change ACTCOSS's view. If it does not, it would really strengthen our contention that having regulation that has a significant administrative cost and no tangible benefit should probably go.

THE CHAIR: When we have been talking to business, obviously, it is a cost to business, and that cost is typically calculated and passed through to the end user or consumer. There is a cost to ACTCOSS as well. If that cost was not there, what support and services could you offer, and how can you make a better difference out there to the community and to individuals? How could it be better spent?

Dr Bowles: I think that, for each community sector organisation, there is a real appetite to invest as much as possible in the core services that are delivered. In most cases, that means frontline services, often to priority populations and people that are experiencing periods of vulnerability in their lives. For a rape crisis organisation, that would potentially mean more counselling services being delivered. For a food pantry, it might mean more food being distributed. It does depend, but I would say that, in every case, the activity that is effectively getting less funding because of Secure Local Jobs compliance is an activity where, by the nature of the ACT government funding it, the ACT government have already said that it is a valuable activity; otherwise, they should not be funding it.

THE CHAIR: They are funding the fee to provide that activity down the track, because they are charging you for the Secure Local Jobs Code, compliance and everything else.

Dr Bowles: Yes, that is right.

THE CHAIR: It is a roundabout, a merry-go-round.

Dr Bowles: Yes, and it is something that has not been reflected in indexation and, typically, it has taken away from services.

MS CARRICK: When we started the hearing this morning, it was about the code weeding out bad actors before they even get to tender. Are you aware of any bad actors getting weeded out by the code before?

Dr Bowles: I am not—not in the community sector.

MS CARRICK: I suppose there could be some that we do not know about, but you are not aware of any?

Dr Bowles: No.

MS CARRICK: There is the code part of the certificate; then there is the compliance. We learnt today that the registrar does compliance with the certificate, as opposed to compliance with workplace practices, Fair Work or the conditions. One of the people this morning talked about having audits to examine workplace practices, but that is not what the registrar does. Do other regulators audit practices, or do we wait for somebody to complain in order to know that there is something not right in a workplace? Is it about having proactive auditing of workplaces or reactive complaints? How does it all work?

Dr Bowles: It depends on the regulatory code. In some instances, though, the regulatory code and process is much more proactive. It will be an examination of employment policies and practices. It will be an examination of how well an organisation is taking on consumer feedback. It will be an examination of how well they are doing WHS. Many of the regulatory regimes that the community sector is subject to are much more intensive than the Secure Local Jobs.

MS CARRICK: That is interesting, because Secure Local Jobs is not out there checking anybody, apart from their certificate. Sometimes I wonder about the power imbalance regarding how people report; then, where there is a problem in a workplace, they do not want to lose their job by reporting. It comes back to the whistleblower thing. Somebody might be a whistleblower on the practices within some organisation. It comes back to having protections for people exposing where there is poor practice.

Dr Bowles: Yes. Many of the accreditation schemes that organisations in the community sector are subject to will examine whistleblower protection policies. You are also alluding to the fact that, at least as far as I am aware, Secure Local Jobs does not appear to make it any easier to be a whistleblower.

MS CARRICK: There will always be poor practices. The world is not perfect. Stuff will slip through the cracks, but we try our best to find it and not let it slip through the cracks. It is a matter of asking: what is the best way? There are all these regulators, but how do we make sure that things are picked up? The registrar for the Secure Local Jobs Code is not out there checking work practices. There are other mechanisms that are doing it. How do we ensure there is reporting to them so that they can do their triaging

and work out where to go and investigate? I am thinking it through in my mind. It is not clear to me that it is the registrar that is helping with ensuring that workplaces are safe and that there are fair conditions.

MS CLAY: If the community sector is not exempted, we have had a number of people talk about how you could make it more appropriate or simpler. There was one suggestion that it could be self-certification for the community sector. I hear very clearly that you do not think it is appropriate for the community sector, but if it is not exempted and somehow there is a different pathway, do you have any views on what government could do that would make it easier for the community sector to comply, and to keep any useful protections? We will follow up and try and find out what those protections are.

Dr Bowles: Self-certification, in principle, could be useful, if it was very straightforward and something to the effect of, "We engage in lawful employment practices," tick. If it relied on organisations doing largely the same—going through the same documents that we are providing now and assessing them against criteria—it could have the perverse outcome of increasing compliance burden in some cases.

THE CHAIR: Dr Bowles, thank you for taking the time to come along and give evidence to our inquiry today. I do not think there were any questions taken on notice. Thank you very much.

EHMANN, MS KATHERINE, Executive Director, SEE Change

THE CHAIR: Good afternoon, and welcome to our hearing today. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading information will be treated as a serious matter and may be considered contempt of the Assembly.

Your submission explains that your organisation had a longstanding arrangement with the government. You were doing work for the government, and you were not required to have a Secure Local Jobs Code, but now, as part of the new tender process, you have to. Could you walk us through that process? Did it affect your organisation? What changes did you have to make? What costs were associated with it?

Ms Ehmann: We had to engage an auditor from the approved list that is provided by the government. We went through that audit process. It was pretty straightforward. I think that we have some quite robust policies and procedures already in place. It was relatively expensive. It cost us $500. On a contract of $150,000, that is not insignificant. With the actual audit, it was not a significant workload for us, although I know that our adjacent organisations, the Cons Council and the Environment Centre, who could not be here today, did have to do quite a bit of work to prepare. I do not think there was very much follow-up at all from the auditor; then we got our certificate.

THE CHAIR: You recommend exempting small community organisations from certification or at least introducing a more simplified process. Can you talk us through what that would look like?

Ms Ehmann: With the three organisations, I will just speak on behalf of SEE Change. We are very small, and all of our work is very local, so we cannot import staff from anywhere else, for all the obvious reasons, I think. There is no benefit, and they would bring no local knowledge whatsoever. We already employ local people. I think that having to jump through this extra, relatively expensive hoop is not solving any problems. In fact, it is creating a whole new one.

THE CHAIR: Yes; it is expensive, there is the way you operate, and who you employ has not changed.

Ms Ehmann: Yes.

THE CHAIR: Yet there is another regulatory burden added, and an extra cost.

Ms Ehmann: Exactly.

MS CARRICK: It is interesting that you say that you already employ local people. I will come to that. I have asked others whether any members have identified tangible benefits from the code, but given that you have just got it, what do you expect? What benefits do you expect from now having the certificate?

Ms Ehmann: None. I cannot imagine a benefit. We got the contract, so that is a benefit.

MS CARRICK: Yes. You were able to tick the box and say that you had a certificate,

so you could engage and participate.

Ms Ehmann: Correct. If we did not have that certificate, we would not have got the contract.

MS CARRICK: You mentioned that you already employ local people. Interestingly enough, the whole Secure Local Jobs Code is not about local people. It is about safe workplaces and employment conditions. It is secure in that context, as opposed to the local aspect. It is the secure bit. It is not the second word, the "local".

Ms Ehmann: Yes, it is interesting. Also, the work that we do is not dangerous work. There is no benefit on that front, either. We have not introduced any OHS policies to meet these requirements, because there are very few OHS risks. One of the issues that it does not solve is that this is our core contract. Because it is quite small, we are having to take on smaller grants as well. We acquitted one last week, for which we were not allowed to use existing staff. We had to bring someone in especially to deliver that very small contract. It is, in fact, not helping us there. It would be great if the government were to look at the employment security of people already working in the sector.

MS CARRICK: With SEE Change, it is a small organisation. How many employed staff do you have, compared to volunteers that you use, if you get a grant and deliver a project?

Ms Ehmann: We have four staff members on various hours per week. I work full time and everybody else is part time. We have about 200 volunteers that work on various projects underneath the SEE Change umbrella. For the grant that I mentioned before, for that contract, we brought someone else in, quite a junior person, to work for a year to deliver that contract.

MS CARRICK: They were not local?

Ms Ehmann: They were local, but we had to bring a new person on, because we could not say to an existing person, "Can you take on this work?"

MS CARRICK: When you put in for a grant, does that trigger having to tick the box for a Secure Local Jobs Code? If it is over $200,000—say you have put in for a grant for half a million or something—would that trigger—

Ms Ehmann: There are not very many applicable grants for $500,000.

MS CARRICK: Would you have to tick the box?

Ms Ehmann: We have not applied for a grant that big. We applied for a grant of about $20,000 recently. There was no mention of it. It is the bigger ones that we have not applied for.

MS CLAY: We have heard from quite a lot of people in the community sector, and I will include the community environment sector in that, who seem to think that the biggest barrier to secure jobs in that sector is a lack of government funding.

Ms Ehmann: For sure.

MS CLAY: Yes. We had a good session in the middle of the day with Minister Stephen-Smith, and I put this evidence from the witnesses to her. She said she was looking at the indexation rate for the community sector. I do not imagine that would apply in your sector; I think that was probably just for the community sector, and they were looking at increasing that. She also said that it is up to the organisations in a commissioning or tender process to tell government what the true cost of delivering the services is and to bid for that.

I challenged her on that and said that it is a bit difficult when government have said, "We have a fixed funding window and we're not going to increase it; regardless of whether we have done a review that tells us that it needs to increase, this is the funding envelope." How realistic do you think it is for people in the community environment sector to bid for what the services are worth in a commissioning or procurement process?

Ms Ehmann: That is not what happens. In our most recent round, to get our primary contract with the ACT government, which is the auspicing of groups, primarily, it was very explicit in the tender documents that we could only apply for the amount of money that had been allocated. I know from freedom of information documents that the government concedes that that was inadequate, and that had no impact.

It is very difficult, because the community sector, particularly the environment and sustainability sector, is not terribly well funded. There is always that risk of thinking, "If we kick up too much of a fuss about being poorly remunerated for the work that we do, there's every chance that there is no funding for us and that it might go somewhere else." That tender round was a public tender, and we did not know if there were other people, other organisations, also going for it. I think that is just not the way that it works. The government is very aware that those contracts are underfunded, and there seems to be no appetite or no resources to do very much about that.

MS CLAY: What indexation rate do you have at the moment?

Ms Ehmann: I am not sure. I do not think that we have previously received indexation. I am unsure.

MS CLAY: We have heard from some organisations in the community sector and the community environment sector that the Secure Local Jobs Code is not a good fit for that sector, and that it was probably designed for other sectors—construction, cleaning and other sectors. We have had witnesses who have said that the community sector should be exempt. The ASU, who are the union for some community sector workers, said, "No, it's really important protection. Please don't exempt the community sector, but maybe you need to make an easier, more appropriate pathway for the community sector to comply." Do you have any views on that issue?

Ms Ehmann: The community sector is a very broad church. There is a lot going on there.

MS CLAY: True.

Ms Ehmann: In some circumstances, the safety and security of staff is really important and needs to be monitored—with a small "m". We need to make sure that those people are safe and that there are good work practices going on. For us, we are very low on the risk level, so I wonder whether there is a way to have a risk assessment and then determine whether or not this process needs to apply.

MS CLAY: You have also mentioned at least one government practice is undermining your ability to offer secure local jobs, which is the tendency, I think, for all government grants to say, "This cannot be used by existing staff members. This must be new labour." Why would government put that restriction on grants? I would imagine that, with organisations that are often operating with lots of little bits of part-time work, it would be much more efficient to say, "Would you like an extra six hours a week?" rather than, "Can I go out and advertise a job for six hours a week and maybe find somebody for this mythical position?"

Ms Ehmann: That is probably a question for whoever puts these tenders together. I have heard—this is second-hand information—that an answer to that question has previously been that, if we were allowed to increase the hours of existing staff—for someone working 15 hours a week, bump them up to 20, for the duration of the grant—there would be the unfortunate situation at the end where that needed to be contracted again. They would go back down to a lower level. That seems to be such a strange response, and I cannot say whether it is true. But that is the only explanation I have heard: "We can't monitor the ups and downs; therefore, core staff remain and we have to bring in other people."

MS CLAY: Yes, externals.

Ms Ehmann: Alternatively, it is also quite common that there is no staffing component at all; then the existing staff need to deliver the contract without any extra hours. They just need to squeeze it in.

MS CLAY: Yes, work harder. This might be too far outside your patch, in which case just let me know: there has been a lot of commentary that the Secure Local Jobs Code does not do anything for local jobs. I feel that government is not particularly good at recognising the benefits of local custodianship and local expertise. We have heard that New South Wales councils actually put much higher weighting on local expertise in their procurement practices than the ACT government does. Apparently, the New South Wales government is already doing that much better. Do you think that there is a need and a benefit for ACT government to be putting, in tender processes and grant processes, more weight on local expertise and local knowledge?

Ms Ehmann: I can only speak about the tenders that I see and the tenders that I complete, and all of our knowledge is local. I am unsure. I can tangentially comment that I can see lots of times where the government go outside the ACT and buy in stuff from Victoria, for example, and they probably could have, perhaps for the same money, organised for those things to be produced locally. It is an imperfect world.

MS CLAY: We have also heard a little bit about duplication. One of the benefits of the Secure Local Jobs Code is that there is already a large framework of federal legislation

about industrial relations laws, Fair Work, WHS and various aspects of what makes a job safe and secure to work in. That is federal legislation. But it can be hard for people to access those rights. They might need a lawyer or a union. If they end up taking their employer to court, they may not get damages until years after the fact. One of the benefits of the Secure Local Jobs Code, it has been said, is that it is up-front; government, at the outset, is making sure that the organisations in receipt of public money are making sure that organisations are complying. Do you have any views on that difference, that duplication?

Ms Ehmann: I would only say that, when we were going through the process of getting our certification, it did not feel like there was a lot of checking. We take our responsibilities to our staff pretty seriously. We probably could have undermined the process, if we had had a mind to. I think that it is duplication and that it is maybe not adding a lot.

MS CLAY: There has also been some commentary on the make-up of the Secure Local Jobs Advisory Council. At the moment, on the advisory council, there is the registrar; then there are representatives of UnionsACT, CFMEU and ASU, the Australian Services Union. There is a directorate person, the MBA and the Canberra Business Chamber. There is no community sector rep on there. There is also no environment sector rep. I do not even know whether people in the environment sector would have time to sit on something like that; you guys are quite a small organisation. Do you imagine that the council might benefit if it had somebody from the non-profit sector in there?

Ms Ehmann: I think so. If this is going to apply to the community sector, I think that the community sector should probably have a voice, and that sounds like an excellent job for ACTCOSS.

MS CLAY: Interestingly, we have heard that from lots of members—not ACTCOSS!

Ms Ehmann: Yes.

MS CLAY: I think they would probably accept it. That seems to be the universal view.

MS CARRICK: We hear that the Secure Local Jobs Code is about being up-front, and weeding people out before they get to tender. Are you aware of anybody being weeded out, from your sector?

Ms Ehmann: No. Everybody I know who has applied for a certificate has received one. I have not done a lot of research into that.

MS CARRICK: In your industry, with people that have perhaps had the certificate for longer than your organisation has, do they ever talk about someone coming along and auditing them or checking on them? Does anything happen?

Ms Ehmann: I previously worked for a much bigger community organisation, and I organised their last certification. That was a more in-depth process. Also, there were many more employees, and a broader range of services were delivered. The process took longer, but there was not a peep thereafter.

MS CARRICK: Thank you. My next move will be to go through the advisory council minutes and see what they actually talk about.

THE CHAIR: Thank you very much for taking the time to come in. On behalf of the committee, we want to thank you and all our guests for coming along. We thank broadcasting, Hansard and the secretariat for helping with today's hearing. For any questions taken on notice by witnesses, it would be great to get them within five days of receiving the uncorrected proof *Hansard*. If any members wish to put any questions on notice, please upload them to the portal as soon as possible, and no later than five business days from today. We will now adjourn.

The committee adjourned at 3.20 pm.