

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

**(Reference: General Agreement on Trade in Services (GATS) with special reference
to the ACT)**

Members:

**MR B SMYTH (The Chair)
MS K MacDONALD (The Deputy Chair)
MS K TUCKER**

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 13 NOVEMBER 2003

**Secretary to the committee:
Ms S Mikac (Ph: 6205 0136)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 11.15 am.

GREGORY JOHN McLEAN was called.

THE CHAIR: You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections, but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

The proceedings today are being recorded. When you introduce yourself, please give your full name and the capacity in which you are appearing today. On behalf of the committee, I thank you for driving down from Sydney this morning and give you the opportunity to make some introductory comments.

Mr McLean: Thank you. My name is Greg McLean. I am the assistant national secretary of the Australian Services Union. Our union covers a wide range of industries. It covers specifically areas within the public sector that fall within what you might think of as traditionally local government areas. but that leads us into electricity, water and that broad utilities area. We are also involved, as you would probably know, in the transport industry, rail, freight and the airlines industry.

Today, I would like to make some remarks to the committee principally concerning our interests within the public sector areas and raise with the committee our concerns in respect of the current negotiations on the General Agreement on Trade in Services and what has led in from that to the Australia-US Free Trade Agreement negotiations, which are similar or the same items.

Our concerns on the GATS issues first arose last year in contact with one of our global unions we work with called Public Services International. PSI represents around 20 million public sector workers worldwide and we have worked with them very closely since the late 1970s. That organisation is an international/global union-based organisation with regional offices, but its head office is in Geneva with the United Nations International Labour Organisation. A number of other global unions are in that area.

Our work with that organisation and also work with other unions led us to research and look at the implications of the General Agreement on Trade in Services for our members in Australia and also for the Australian community. We took the opportunity to write to a range of governments outlining our concerns and we placed submissions before the Senate and, in particular, a copy of a document I have provided to this committee already, which is publicly available as well, which is our submission that we put to the Australian Senate hearings into the free trade issues, the GATS round and the negotiations for an Australia-US Free Trade Agreement.

The Australia-US Free Trade Agreement is the latter item and I note that the area the committee is investigating refers specifically to GATS. However, the Australia-US Free Trade Agreement has picked up on some of those issues and will continue. GATS, as we

know, is about the trade in services and the ability of companies to move into other areas and provide the services that they are familiar with or may have some sort of involvement in, perhaps being contractors and such, in the same way as they are currently provided by the public sector.

It goes substantially further than the deregulation we have seen in Australia thus far, and there are a number of issues under the national competition policy as well. Our concerns principally are that if there were to be the open slather type of approach to GATS such as the European Union and the American government had been pursuing we would see local, regional and state government in Australia lose some of its own decision making power and that would have implications for the Australian community and those local communities where those organisations are based.

To give you an example, under the GATS rounds of negotiation one item is still clearly on the agenda—waste services. Waste services is not just the waste rubbish and garbage collection that we would be familiar with. Waste services also links into waste water services and companies that are involved in the participation of waste services in water would obviously seek to get involved in the freshwater cycles as well.

It is not just the issue of contracting out; it is also the regulatory frameworks that exist around the provision of those services. Local government, for example, in regional New South Wales, the state that surrounds or borders on the ACT, would find itself in a position where, if GATS were to be signed off in line with the ideals that the European Union have, those agreements may preclude that council from conducting its own water services as it so wants. It may also mean that they have to open those services to competition delivery and also those companies may seek to question the regulatory framework that has been placed around water services.

I know of some of the extremes of examples that were looked at in, for instance, the United Kingdom. Local government in the United Kingdom was fearful that it would have to alter its planning legislation because in a lot of the rural areas of the United Kingdom it traditionally does not encourage the construction of large/mega supermarkets because it has an effect upon the buildings, the architecture, whatever, of the towns. If that had been pushed in the way some of the large American companies wanted it to be pushed, they may have found that they would have had to revisit some of their zoning regulations to construct buildings that were sympathetic to the goals and objectives of large/mega supermarkets and that could have had implications even for regional roads.

For those that are sceptical about some of this, perhaps we could think back to the time that the Tasmanian government raised substantial concerns against the Canadians for the importations of fish produce and produce-related feed and got themselves into all sorts of problems and found themselves before the world trade courts. The world trade courts, of course, have their judges and panels of experts based in Geneva, where the World Trade Organisation is based, and they make decisions that are then actionable by governments, one against another, or for that matter a company against a government.

One of the other issues to think about with GATS as well is that if you think about some of the agendas that are coming out of the European Union, also out of the USA, you will note that they seem to be perhaps driven by some large businesses or large business enterprises that are located within the European Union and therefore lobby their

government to open up trade in other countries. Recently a meeting of left wing members of the European Parliament took place in Italy and they requested that the issue of water be removed from the list of GATS that are around.

There is a substantial amount of information available on the internet. One of the reasons that we became aware of it was on being made aware of the information on the internet by some of our European Union colleagues and we went to some websites and located the list of items that had been foreshadowed by the European Union against Australia. From that we undertook some decisions internally within the union, embarked upon a campaign and encouraged our branches to take action throughout Australia, writing to regional governments, state governments and local councils advising them of our concerns.

Part of our exercise also included us writing to Minister Vaile's office. I must admit that I was very pleased with the response I received from the minister's office and with subsequent meetings that the minister arranged for me to have with advisers that were participating in negotiations. Also, I was quite surprised at the level of depth of the minister's office in understanding the areas of interest to the ASU, in particular the electricity and water industries.

Just going to the electricity industry for a moment, I note that the ACT undertook a form of reform of its electricity industry recently but it is also opening up for competition in the near future. The electricity industry in Australia operates within a mixed bag of both the public and the private sector, with about 31 per cent of the industry, I think, being privatised. I include the South Australian couple of hundred years lease in that remark as well. New South Wales, as you know, is corporatised. Queensland is corporatised. Tasmania is corporatised. Victoria is privatised.

Those states are all linked at the moment by the national grid or will be linked by the extension lead off to Tasmania in the near future. That means that we have a regulatory framework operating in each state and we know that there are US energy companies that have already gone public in saying that they have some concerns about regulatory frameworks, because they see regulatory frameworks as an inhibitor to business practices and a commercial inhibitor to their venture. The issue of GATS is one where governments can face appeals by other governments and corporations against their actions of regulation, so regulatory frameworks are issues that can be important even if a government has taken steps to privatise or distance itself at arms length from the day-to-day operation of a utility such as electricity or water. There are those sorts of implications that sit behind it and those fears and concerns that we have.

Our fears and concerns are very simple: if regulatory frameworks are removed, if local authorities find themselves being forced—I emphasise “forced”—to outsource their work, we might find that the trucks that are purchased for the conduct of that business day-to-day are not from the local community. We might find that plant and equipment are purchased from wherever the head office happens to be and shipped out. We might find that the payroll is processed somewhere else. We might find that the call centres process somewhere else. I noted in some of the media remarks that were around during the bushfire concerns that took place in the ACT with respect to access to gas companies over the phone on a Saturday afternoon.

The implications are fairly broad. If those councils were forced to outsource a large amount of their work, and it is being pushed through GATS to outsource that work, they may find that the plant and equipment are no longer based in their towns or cities. The plant and equipment used for road maintenance, water and sewerage works, digging up trenches and such during the day could be used of a night or of weekends by the SES for flood mitigation, bushfire control and other services. So it is not just the provision of those services but also where the equipment that is used to provide those services is based and, traditionally in Australia, governments have exercised a wide span of those functions and the equipment has been used for other purposes by the community—as I mentioned, bushfire control, flood mitigation and other issues.

When governments such as the ACT government look at the issue of GATS it not only needs to be for the provision of the services that they provide to the community, be it health and community services, social workers, water, electricity, roads, plant. A whole range of issues could find themselves being opened up to competition by way of GATS.

THE CHAIR: We are going to run out of time.

Mr McLean: I am sorry, I have got very little time for questions. I will stop at that point and move to questions.

THE CHAIR: I am pleased that you have had a good response from Mr Vaile's office. In their submission they state that under both GATS and the Doha declaration governments remain free to regulate services in the public and private spheres. Have your fears and concerns about the loss of sovereignty been allayed or do you still think that there are outstanding issues there?

Mr McLean: The GATS negotiations are something that is starting here and will continue for a long time into the future. I do not know what the position is going to be in five years or three years. The issue of regulation is extremely important. If you examine what has taken place in, for instance, the NAFTA rounds of negotiation, NAFTA has seen regulator issues raised of great concern. The Canadians have suffered quite damagingly in respect of water against the US companies. Also, the Mexican government has had extreme concerns on waste services.

MS TUCKER: In terms of standards, you are talking about, and regulation.

Mr McLean: In terms of imposing their local regulation and environmental standards. Those standards have been questioned by the parties that are signatories to NAFTA. I notice that NAFTA is not being negotiated in a similar way to the Australia-Singapore Free Trade Agreement, which is an exceptions-based agreement. GATS, at least you have to list the items you want to deal with. The Australia-Singapore agreement and the current rounds of negotiation taking place with the Australia-US Free Trade Agreement are lists of exemptions. You have to list the services you want exempt, which means that if the service is developed tomorrow or next year or comes about with something we do not know of it is already exempt. This is one of the concerns we have.

MS TUCKER: It is exempt or it is not exempt?

Mr McLean: Future issues are exempt from restrictions. They are encompassed within the free trade aspect if they are not listed. It's not a positive list, I suppose, is what needs to be said for the Singapore-Australia and USA-Australia free trade negotiations, on my understanding, whereas GATS is a list of issues to be dealt with.

THE CHAIR: The other key issue of your submission is consultation with the states and local government.

Mr McLean: Yes.

THE CHAIR: On page 9 of your submission you say that it should be encompassed within high-level roundtable negotiations, such as were established by the previous Keating government when dealing with electricity reform. Is the consultation with the states and local government inadequate?

Mr McLean: I do not believe that it has gone far enough. One of the difficulties with trade negotiations is that in the USA, for instance, if you want to negotiate a trade agreement you go before a joint house committee and the joint house committee grills the people on what they are going away to negotiate. There is a range of questions and the bottom line, of course, is what is good for the USA. After those people go away and negotiate the agreement, they come back before the committee and advise the committee on what they have signed off on and then the legislation is drafted.

In Australia, agreements such as free trade agreements are signed off at the cabinet level and the parliament finds out about them when it is time to enact the legislation, or can find out about them at that time. So they can be advised afterwards. I was pleased with the debate that took place in Australia earlier this year, with so many community groups and people asking questions that the government came out and put a substantial amount of information on the website. I do know that some people in DFAT have been quite pleased with the fact that people are now starting to look at the issues. We are concerned about them.

From information I have been provided with, I am led to believe that cabinet level in all states is discussing this matter. That is anecdotal evidence that has been passed on to me. I know that they are concerned about it. I know that local governments have written to the minister and raised a series of concerns. My other concern is that when you go away to negotiate an agreement, sometimes it is not possible to negotiate everything you want within the parameters you left with and expected it to be negotiated on, so quite often those parameters can change during the negotiation process. That is one of the things that do worry us. I think that it would be very good for a roundtable arrangement to be put in place similar to the way that electricity reform was kicked off, when we did have those roundtables of community groups and governments.

MS MacDONALD: Yesterday, the representatives of the department were making the comment that their consultation was extensive. I think they made the comment that they were continuing the consulting, but you do not believe that it has gone far enough.

Mr McLean: The consultation needs to be ongoing. I do admit that, since this report was drafted in January or thereabouts, the consultation has seemed to have opened up more. We have seen the Senate have their committee going around. It is not a government one;

it is a Senate committee inquiry. We have seen more information being placed on the web by DFAT. We have seen more information come out, but I suppose my concern is to make sure that it is ongoing and I would encourage governments such as the ACT government to look towards establishing formal arrangements for ongoing consultation on trade agreements—Australia-USA, Australia-Singapore, GATS; a whole range of issues—because they do have the ability to be a bit of a moveable feast and they do have the ability to go beyond what they were first expected to do.

MS TUCKER: Do you have any comments to offer on the dispute settlement process as it is now? We were told yesterday by the federal government representatives that the dispute settlement process is one that ensures neutral ground and fairness and there is obviously a critique that is different from that. I am wondering whether you have any comments on that.

Mr McLean: On the process of neutrality, I suppose any committee makes a decision on the rules that it is given to enforce. I think the first thing when you are looking at neutrality issues is: what are the rules that the committee is going to look at and what are the rules that the committee experts are going to apply? Whilst the process may be neutral and you may think that it is open to being fair and such, the process is judged, on my understanding, by experts that are based in Geneva. It is a case that, if you want to take a matter to appeal or deal with it, you need to deal with those people who are making the decisions in the panels in Geneva on trade.

I would again come back to the point as to what are the rules of the agreement that the panel is going to enforce. Whilst the panel may be neutral—that is fine—I would question what are the rules the panel is going to enforce. That is really the issue and I think you need to be concerned about it. Once the rules are established, the committee may be neutral and the committee's outcomes also may be neutral because they would be people who would not necessarily be from the countries involved, but the process that they are enforcing is limited by the constraints that the government has already signed off on or negotiated around.

THE CHAIR: Mr Vaile said in his press release that water is not on the table and is not an issue. Are you happy with those sorts of safeguards or, as you intimated earlier, is there a backdoor to undermine that?

Mr McLean: My understanding is that waste services are on the table and waste services do include waste water—that is my understanding—and if you are a provider of waste services in the water industry, such as Veolia, Vivendi, Connex, which you know as Collex, Thames Water or the other multinationals—you could probably get yourself a good establishment dealing with waste services and then offer fairly lucrative opportunities to ordinary water services. Water might be exempt, but the issues of waste water create bridges that can move into the water industry as well.

THE CHAIR: Is that a matter of definition or has it not been thought through properly?

Mr McLean: To the best of my understanding, waste services are exactly that of waste services and waste services can mean waste water, sewerage water. My understanding is that sewerage and such like are classified as waste services. We might think of it as waste water, but it is classified as a waste service. If you put an infrastructure in for

dealing with waste water you get a bit of a foothold to move into water for other areas as well.

THE CHAIR: Is the minister aware of that? Have you made known that concern?

Mr McLean: I would think that the department would be aware of that. There is also another issue. There is the issue of the regulation of water in the provision of it to the community—that is, the pipes have to be this round and the pressure has to be at that level—through to who is going to compete to run the plant on a day-to-day basis. I do know that some governments have made decisions already on this basis. If you look at the BOO plants, the build/own/operate plants, that are being built in Sydney’s western suburbs and the new Vivendi water plant just south of Wollongong—north at Bomaderry, but the name escapes me; a new coastal plant that is being built there jointly by Sydney Water and Vivendi Water, now Veolia—I would think that some of those issues are the ones. It is not just the regulation of the water system; it is actually the facilitation and then delivery of the water service as well that you may want to have greater control over as a government, rather than leaving it entirely to the private sector.

MS TUCKER: I have a quick question on definition. This matter has come up in a number of submissions and the government representatives are saying that it is not an issue. I refer to the question of definition around what is a public service and the exemption. Government claims that public services are exempt but there are critiques which say that you can drive a truck through those exemptions because they are services conducted under the authority of government but they do not qualify as that if they are in a competitive environment or privatised, which most of our public services are to some degree, so there is concern. You made the point before that you cannot look at this discussion in the context of now; you have to understand what is the ultimate objective of governments and the trade lobby, which is a total opening up of all services, the liberalisation of all services. With questions of definition like this one which are open to challenge later, concern has been put to us in some submissions. Do you have a comment on that?

Mr McLean: Yes. The people who have put the concerns to you are right. I think the simple answer is: think of national competition policy. What did we expect national competition policy to do and how is national competition policy being taken to the nth degree? To give you an example, I can go to councils in New South Wales that have five different child-care centres, and then they will restructure and bundle them all together and put them under one department and say, “That represents more than \$100,000 income to council each year. Under national competition policy, we have to open those services to competition now. Rather than just performing them in-house, we have to open those services to competition with the private sector.” The private sector then walks in, and is actively doing this, and says, “You should be looking at that very closely in respect of whether that service should be opened to competition. We believe it should, it’s a business.” That lobbying process goes on.

You are very right that one step here can mean other steps later. On the definition of what is a public service and what is a local government service, in the UK it includes schools and hospitals. In Australia it does not include schools and hospitals. There is a very wide definition. I suppose anything that is provided in the public interest or is a service to the public. We often see the private sector now come around and say, “We

provide public services.” The taxi industry considers itself to be a public service. These are very broad definitions. I think you can only define them by actually defining the service, like water, electricity or whatever the actual definition of the service is.

MS TUCKER: Obviously there are definitional issues within water. In the minds of the community, waste water would be included in water. That is the discussion every day in Canberra. Water includes how we recycle grey water and how we are reusing Molonglo water. The common understanding is that water would include that. But then you have these definitional arguments that can occur in a very expensive and complex legal environment through the dispute settlement process.

Mr McLean: The original definitions on water services that were put forward by the European Union started at the catchment and ended at the tap. That is pretty broad, because that would involve the land use. It would involve a whole range of issues and a wide range of environmental challenges that could be made. Often people say that you cannot do something for environmental reasons and then the argument comes back, as the Mexicans have found already with their waste services. They did not want a particular waste plant built in a certain area but an American waste company said, “Hang on a second, there is an example of where this operates somewhere else. The waste plant is this close to a township in another part of Mexico. Therefore, you should be able to have it here.” There are those glaring examples.

If you do require some more information, there is a substantial amount of information on websites and if you do require listings I can pass some on. There is one organisation in Australia called AFTINET. If you have not had a look at them, they are quite good. We are an affiliate of AFTINET. We pay \$100 or whatever it is.

MS TUCKER: I have a quick question. We might be able to ask it directly of the Local Government Association, but you seem to be fairly familiar with what they have done. You said that they had put their concerns to the federal government. Are you aware of whether they received a response? Are you saying that they just put their concerns through submissions to the Senate committee?

Mr McLean: One of the reasons we received such a good response from Mr Vaile’s office was that hundreds of councils ended up writing to the federal government. I thought they had had 50 or 60 and the adviser said no, there was quite a number. We wrote to, I suspect, about 350 or 400 councils. We didn’t get to them all, I know that.

MS TUCKER: Do you know whether there is a summary of their concerns anywhere that we could see?

Mr McLean: Yes, there was a resolution carried by the Australian Local Government Association at their conference last year and you can get that from the ALGA. It is based in Canberra. Also, you will find that similar resolutions were carried by all state local government associations as well.

MS TUCKER: We can contact them.

Mr McLean: If there are any questions or any matters post the committee’s hearings, please contact me.

THE CHAIR: That is very kind. Thank you and thanks for travelling down this morning.

Mr McLean: Thank you.

DANIEL STUBBS and

KATHRYN KELLY

were called.

THE CHAIR: Good morning and welcome to ACTCOSS. Thank you for appearing before the committee. We will start with the formal introduction.

You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal actions, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

The proceedings this morning are being reported so, for the purposes of the Hansard recording, please identify yourself and the capacity in which you appear when you first speak.

Daniel, do you wish to make an opening statement?

Mr Stubbs: I am Daniel Stubbs, director of ACTCOSS, the ACT Council of Social Service. Thank you, Brendan, Karin and Kerrie.

First of all, I thank you for accepting our submission after the due date. There is a fair chance that you haven't had a chance to read it. I also have with me Kathryn Kelly, who helped us put this submission together. I am going to ask Kathryn to speak and then I will add information about the local context. Kathryn will speak first.

Ms Kelly: I am Kathryn Kelly, and I am acting as policy adviser to ACTCOSS.

The implications of the GATS are extremely serious for all levels of government in Australia. The terms of reference for this inquiry talk about the impact on the regulation, funding and provision of essential services and all of those may be affected by the GATS. Flexibility in decision making, in particular, is one of the major constraints that may, and is likely to, arise if the GATS is adopted by the Australian government at this time or in the future.

Consultation with the community will also be extremely limited because many options for the way that governments can operate will be closed off. Consultation, even that done with the best intentions, will be limited because the community will not have particular options open to it.

I want to talk about some of the main areas of concern. Some major concerns, particularly for ACTCOSS, are in the area of public services, which are critical for those on low incomes. A whole range of services can be covered by the GATS. Some that have been put forward are health care, hospital care, home care, dental care, child care, elder care, education through all the different levels, libraries, law, social assistance,

architecture, energy, water services, environment protection services, real estate, insurance, tourism, postal services, transport, publishing, broadcasting and also local government planning services.

Apart from those areas that can be affected, there are other implications for the regulation, standards and licensing of all those areas. That is where some of the major implications arise.

We were talking before about the definition of public services and whether they are going to be affected by the GATS. There are clear definitional problems with the GATS as it is being presented. There is no generally accepted definition of a public service, and what will be excluded and what will not be excluded. Of the services provided by government authorities, the ones that would not be affected by the GATS would be those that do not have a commercial aspect or involve no elements of competition. There is virtually no area of public services in Australia that would come into that category.

We obviously have private hospitals among our health services and private schools in the education area. We have some water utilities that are now in the private sector, through contracting out of various aspects of water services. All of these areas can be included in those that will be affected by the GATS.

Another major concern that we have is that, even if Australia does say that some of these areas are excluded at this time, one of the objectives of the GATS is that, in the future, more areas will be covered by the agreement. As some countries are going to be identifying areas that we might now exclude, such as education or health, I have no doubt that there will be pressure, in the future, to allow those areas to be covered by GATS and be opened up to competition. That is a major concern. Even though the federal government may say at this stage that these areas will not be affected, I do not think we can take that as a guarantee into the future.

In the health sector, obviously we have private health services now in many areas. The area of health professionals is another one that can be affected by the GATS. The movement of health professionals from one country to another can be a concern for us. When we have standards or requirements for registration here, we may come under pressure to relax those standards or requirements. They may come under attack.

In the past, this may have been a concern for people coming from other countries who wanted to work here, as it was seen as a restriction on them. In some ways, in the past, our systems may have been used to keep people out, but there is also the aspect of public protection, and we have to look at both sides of the argument.

If we take a very broad view of the issue and look at developing countries—which is not directly the concern of the ACT government, but of course we do have to look at the global impact of our actions—a great danger of this is that it could prompt a brain drain from developing countries. They could lose their health professionals—nurses, doctors—to developed countries where they can earn higher incomes. Already, apparently, there are more Bangladeshi nurses in the Middle East than there are in Bangladesh. There are also many Filipino nurses in the US, so this professional drain is already happening.

Particularly in Europe, there is a push for education to move further into the private sector. This is of concern with regard to our public education system and the qualities that we want to encourage in that system.

Water services have been discussed. They are also under threat. We already have in Australia quite a degree of private sector involvement in water. For a country such as Australia, which is quite dry, water is critical. We have a huge problems with water in the Murray-Darling Basin. The GATS will affect these services from the catchment not only to the tap, but then to the sewerage services and what you do with those services: whether you develop grey water systems, for example. The way all those systems are integrated is extremely important for all levels of government in Australia.

We had the example here in the ACT of the ACT government having to buy a \$40 million filtration plant after the fires to ensure that the water supply is adequate for consumers. That sort of thing cannot really be foreseen. You cannot foresee all these things, put them into contracts and manage the water system appropriately if there is considerable private involvement in it.

The Europeans are also pushing the area of water services, largely because the major companies, such as Suez, Vivendi and Thames, stand to make millions of dollars from expanding their operations in Europe. There have been enormous problems in many countries where they have privatised water. It is interesting to see that, in the US, they started off back in the 1880s with private water companies providing the water and, over time, they found that that system was not providing the services that they needed and they changed to public water systems.

Now, the push is again to private systems so they haven't really learned their history. However, some places have: in New Orleans they recently refused a privatisation push and a number of other places in the US have refused privatisation. They are fighting against that backward step into the public management of water services.

MS TUCKER: Private, you mean.

Ms Kelly: Sorry, yes.

THE CHAIR: Kathryn, we have probably got until about a quarter past 12.

Ms Kelly: Okay, I will try to make this quick.

Another area that is of extreme importance is that of environmental regulations and standards. One of the general problems with the globalisation of trade is that the environmental costs of trade are not taken into account. This applies also to many of the services in which transport is involved, in particular, because the environmental costs of fuels and such things are not taken into account.

There is also the issue of licences and standards. We have examples from the US in which that country's clean air regulations were deemed to violate WTO rules. There is also the issue of the banning of a chemical in Canada. The Canadian government tried to ban a fuel additive on public health grounds. That was challenged and defeated by a company, which said that it was a restriction on trade.

You will also have heard about the example of a company in Mexico that tried to set up a hazardous waste plant in contravention of zoning regulations. That is one issue that is not in our submission: the implications for planning. I think this is very important in the ACT where planning is a major issue. I want to read to you a little bit of this study on the GATS and public services by Jonathan Pickering for the Public Interest Advocacy Centre. He says:

Since zoning provisions have the potential to limit the number of service suppliers operating in an area, it is possible that such measures could be subject to challenge under the market access provision of GATS, for example the prohibition on “limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test”. For example, it is possible that an overseas retail chain—

or a petrol company—

wishing to establish a large store—

or a petrol station—

in a local government area might be able to do so despite community resistance by using Art XVI to override planning controls on the location, number and size of shopping centres ...

Or whatever other business may be put in place. The planning controls could be challenged.

Another challenge could be brought under the GATS by service providers wishing to operate in a local government area, but also by businesses contracted to undertake construction activities for those service providers. A communication by the EU on construction and related engineering services gives some indication of the scope of possible challenges:

The construction sector is subject to many different aspects of domestic regulation. They include controls on land use, building regulations and technical requirements, building permits and inspection, registration of proprietors, contractors and professionals, regulation of fees and remunerations, environmental regulations, etc. Such measures are applied not only at the national level, but also very frequently at the sub-federal or local government level.

These are other areas that could be subject to challenge under the planning service provisions.

Restrictive regulations relating to zoning and operating areas to promote stores are also of concern, as is licensing procedures—all these sorts of things can be challenged under the GATS.

Communications is another area which is of importance to people on low incomes, and everyone generally. We now cross-subsidise our postal services. The postal service in

Canada has been under challenge by a US company, so we are likely to suffer such challenges as well.

One of the other major problems is that governments could be expected to make huge damages payments if a company decides that its future profits have been restricted or it has been excluded from gaining those profits. The foreign investment controls are another area that is of concern, because they could preclude governments at whatever level from encouraging the local development of businesses, community groups or other sectors in an area.

All of these concerns are valid and they do point to the fact that, if we go down the track of accepting the GATS, a minefield of problems will open for the community and the government because of the restrictions that will be placed on their ability to manage sectors or issues.

Daniel, do you want to speak now?

Mr Stubbs: I might add a few things, bearing in mind that we are running low on time.

Obviously, ACTCOSS's greatest interest in all this is low income consumers and consumers who are often marginalised already. We have already released some work on water. We prepared a joint release with the ACT conservation council about what we believe should be done with water policy. With the introduction of the GATS, I don't think a lot of our pricing recommendations and demand management recommendations could be taken up, because that would require government to play quite an interventionist role by charging the higher end users more per litre and such things.

Similarly, we have advocated against the privatisation of electricity services, but we believe we have been successful in advocating for the high level of regulation required in a privatised market such as that. We may well lose that under the GATS on the basis that it would inhibit free trade. We think it is crucial that we have ongoing access to essential services for people on low incomes. In a highly privatised market, it is the people on the lowest incomes who will often lose security of supply of some of these essential services.

Already, we see the risk here, and a greater risk in other jurisdictions of Australia, of creaming by utility providers—taking the highest users and trying to leave out of their markets those who are unlikely to be able to pay or those who might default on payments and so on. The risk of that would greatly increase under a GATS regime.

The issue of a prison has also come up for us. Obviously, we are interested in corrective services in the ACT. This government has already indicated that it will not be supporting a private prison in the ACT but it may be unable to make that claim under a GATS regime, because that would have to be open to competition.

In the community services sector there is currently a requirement that, when government contracts with the sector to provide services such as disability services or supported accommodation assistance program services, it contracts with not-for-profit providers or non-government organisations. That would be stopped under GATS and the government would be required to open up that market to private providers and, potentially, to international providers.

As the previous government did, this government has already realised that tendering in the community services sector is not necessarily the best way to ensure a viable and sustainable community services sector in the future. Under GATS, this would be an extreme version of tendering, which opens up the potential providers of community services to not just all non-government services, but to the private sector.

At the moment, we are looking at a situation in which tendering is not the first port of call. The policy is still under development, but tendering will not be seen as the first avenue through which community services will be provided. Instead, the market, the needs and other things may be assessed and a limited tender may be offered—a certain number of community service providers are asked to provide expressions of interest and they then go on to submit tenders. Again, this maybe illegal under a GATS regime.

Finally, in a more general sense, it is disappointing and frustrating that such things as international covenants and conventions on human rights are signed and forgotten, and international trade agreements always seem to overshadow them. Organisations such as ACTCOSS, and its national body, continue to be frustrated by the fact that it is the human rights conventions and covenants into which we should be putting at least this amount of energy. Thank you.

THE CHAIR: Thank you, Kathryn and Daniel. We have 10 submissions. I notice you have taken an unusual step. In your last paragraph you have called on the ACT government to make all possible efforts to make sure Australia does not sign the General Agreement on Trades in Services. Two of the other submissions have asked for a moratorium and more work to be done. Seven, in one way or another, have said, “Go ahead, but make sure you negotiate in certain conditions.”

Why shouldn't we sign the GATS? You don't believe enough work has been done or is there something that would allow the ACT government to recommend that the GATS go ahead?

Mr Stubbs: We can't see any up side. On the basis of the needs of low-income consumers and already marginalised consumers, that would be much further exacerbated. Maybe a future, incredibly different agreement on trade in services might precipitate a different response from us, but at the moment there just doesn't seem to be any up side for our constituents, our organisation and the services they provide.

Ms Kelly: If I could just add to that. I think one of the main problems with the GATS is that it is such a broad-brush agreement covering so many sectors. If it was to look particularly at one area, one lot of services, consult on that and really go in and look at the implications, you might have a chance, I think, of identifying whether it was going to be positive or negative. But when it is such a grab-all of so many services in so many different sectors, with so many implications, it is really not possible under this sort of approach, I think, to work out where the benefits and disbenefits lie. It is very dangerous, particularly when there is the continuing push to drag more and more into that regime. I think that is the problem.

The Australian government has signed up in one way to it. The basics of the agreement would be part of it, but what we are saying here is that they should not go ahead with the arrangements as they are now unfolding.

MS TUCKER: Yesterday the federal government made the comment that we have already signed it. But it is about what sectors we are prepared to liberalise. One of the submissions suggests that a way to progress this is to take into account, for example, human rights. The relationship between other international conventions, trade agreements, has never been fleshed out by anyone, as far as I can tell. One submission suggests that there should be no further work until there has been a full socio-economic and environmental analysis of any proposals. Would you support that?

Mr Stubbs: A minimum requirement, I would have thought.

MS TUCKER: We will take that as something you would support.

Ms Kelly: One other thing I didn't mention here is that one of the areas under the GATS is recreation and beach services. That is one that hasn't been mentioned in the submission. Is it possible that a user-pays approach for national parks could be brought into the GATS? That would be of concern, I think, to the ACT, with the parks we have here to manage.

Also, with the tendering process, if international companies come into the tender process, because of their size, would they have the scope to undercut, in initial bids, and drive local companies out of the market and then, at a later stage, put up those prices? That is a real danger. It is not a level playing field in any respect when you are dealing with huge companies the size of Suez, Vivendi and what-have-you, and that is where it is really unfair for local businesses and local companies—developing companies, basically.

Mr Stubbs: Often in this sector in this state and other states we make clear decisions that are anti-competitive, on the basis of wanting to help grow or build small community organisations to deliver services. It could be HomeLink services or HACC services or whatever. They are clear decisions to make sure that the organisations are the ones that are very close to the grass roots of what is going on in the community. That is community development, if you like. That could be walked all over by profit providers providing homelessness shelters and that sort of thing. The reduction in quality control and that kind of thing, which the government has with the non-government sector, would be, I think, devastating.

THE CHAIR: The government, in their submission, does say:

Public services are excluded from the GATS.

To clarify that, the minister put out a press release in which he specifically said:

Australia will not be making any offers in the area of public health, public education or the ownership of water.

Those guarantees aren't strong enough?

Mr Stubbs: As the previous witness before the committee indicated, we need more definition of what public services would be. I suspect that services provided by the community sector wouldn't be captured by that. Every time we explore another area, it explodes out to another thing which we hadn't thought of.

MS TUCKER: Whatever this government might think a public service is, you are working with pages and pages of legal documents. The definition in the GATS of public service will be challenged legally. Whatever this government says they think a public service is, ultimately, while the definitions are so sloppy within the actual rules, there is the potential for challenge.

I didn't get a chance to ask the federal government representatives a lot of questions yesterday because we had only a short time. I am interested in the resource implications of these disputes because I understand that the federal government actually have significantly increased the legal area of the department to deal with exactly this. Obviously one thing that the developing countries speak about all the time is that they can't do that; they don't have the capacity to empower themselves legally to deal with the disputes process because of the money that is involved.

Ms Kelly: It could apply to the ACT government as well.

MS TUCKER: The ACT government can't ever challenge; that is the other point.

Ms Kelly: No, but an international company could challenge the ACT government on something.

MS TUCKER: The Australian government is the one that would be handling the dispute, not the ACT government. That is one of the concerns that have come through the submissions. We wouldn't even have a say, because it is always the federal government, the nation, that actually deals with the disputes; it is all at that level.

Mr Stubbs: The ACT government could actually be a respondent.

Ms Kelly: I think that is one of the problems.

MS TUCKER: Not according to the submissions. They could say to the Australian government, like Tasmania did, "We want you to fight for us."

THE CHAIR: Except in that case, the example cited was a waste plant in Mexico. It was the local government that was being sued. The Mexican government signed the agreement, the American firm wanted to come in, and the local government was paying the price for refusing the company the authority. There is an issue there.

The federal government representatives said yesterday that they are always briefing the ACT government. Has ACTCOSS ever been called in for a briefing? Have your views ever been sought by the ACT government on these issues?

Mr Stubbs: Never. I am staggered to hear people talk about community consultation and briefings about this. There has been some involvement by our national body, but that has been fairly limited.

THE CHAIR: This may well be the first attempt by any jurisdiction to find out what the local opinion is.

MS TUCKER: I have written to a previous Chief Minister, Mrs Carnell, about the detail. Basically, all the file was my letters to her. I wanted the whole file. It was my letters to her asking her what she was doing. As a committee, I think it would be great for us to write to this government saying that we would like absolutely a full paper trail of what they have done in consulting with the federal government about this.

THE CHAIR: And with the community.

MS TUCKER: And with the community; also, what they have said back to the federal government; what they have asked.

Mr Stubbs: Or even what they have been told.

MS TUCKER: We were told yesterday by the federal representatives that that is not correct. It would be very interesting if the committee could see that paper trail.

Ms Kelly: I think that is a real problem. The free trade agreement is a similar sort of situation, obviously. I understand that things are kept very much within a small group in DFAT. Consultation outside of the small group who are doing it is very limited.

MS TUCKER: The representatives told us that they had quite a lot of consultations before they put their initial offer. I think we should ask for the detail of that, if it didn't come in their submission. Can we ask the ACT government also? If we are asking the federal government, can we ask about the bilaterals as well?

THE CHAIR: Why not have that discussion in private?

MS TUCKER: Yes.

Ms Kelly: One further thing on the dispute resolution process you were talking about before: another part of the problem is that the hearings are in secret; there are a panel of trade lawyers who actually decide it; and, as the representative was saying, they are deciding according to the laws of the GATS and not according to various countries interests or environmental or health implications. They don't have, necessarily, the expertise in the sector they are deciding a dispute on—whether it is environmental standards or health or whatever—to actually make a decision that is in the public interest. They make a decision according to the trade laws.

MS TUCKER: I would be interested to have you see the transcript of the hearing yesterday on that. If you have further comments, could you send them to the committee? I asked that question. The response was quite interesting in terms of the expertise that can be brought in. The transcript will be published eventually. We can ask more questions. This is a different story that we are getting. We might need clarification on that.

Ms Kelly: I will see if I can find the sources of that.

THE CHAIR: That would be kind. I have to say that it has been a pleasure talking to you but, unfortunately, the meeting is about to close.

MS MacDONALD: My apologies for having to duck out in the middle of it.

Mr Stubbs: I understand.

MS TUCKER: Thank you very much.

THE CHAIR: With that, I will close the public hearings.

The committee adjourned at 12.21 pm.