LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON WORKING FAMILIES IN THE ACT

Members:

MR M GENTLEMAN (The Chair)
MS M PORTER (The Deputy Chair)
MRS J BURKE

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 24 MAY 2007

Secretary to the committee:
Ms G Concannon (Ph: 6205 0129)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

The committee met at 2.05 pm.

SATTLER, MS KIM, Secretary, UnionsACT
SHANNON, MR CRAIG, Industrial Officer, UnionsACT

THE CHAIR: Good afternoon and welcome to the inquiry of the Select Committee on Working Families into the effects of federal government legislation on working families in the ACT. This afternoon we again have Kim Sattler and Craig Shannon from UnionsACT before the committee. Before we go ahead, I will read the privileges card to you.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings. Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privileges means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

Ms Sattler and Mr Shannon, thanks very much for coming back. We were delving into your submission and getting through quite a lot of information at the last meeting but did run out of time.

Mr Shannon: If I might ask, what is the status of our report for distribution purposes at this point? I raised it at the last meeting. We need the committee to give consent for us to distribute it.

THE CHAIR: We have authorised it for publication.

Mr Shannon: I am sorry, we were not aware of that.

MS PORTER: We did that afterwards.

Mr Shannon: We had not been informed, that's all. Thanks.

Ms Sattler: There is a bit of demand for it at the moment.

THE CHAIR: That is good. There must be some very important information in it for others as well.

Ms Sattler: I know that you had questions last time that we did not get to. I had three items that I was going to address, but do you have any questions that you want to leave some space for?

THE CHAIR: It is probably best if you continue with the items that you were going to address and then we continue.

Ms Sattler: Okay. My first issue is the child labour issue, which I am sure people are aware was in the media this week. When we attended the Youth InterACT conference we ran a workshop which was a concurrent workshop. They were running six at a time, and young people who were attending the conference could choose which one they wanted to go to. We had 15 young people come to our workshop, half of whom were already in the workforce, and the other half were coming to the workshop so that they could have a better understanding of how to make an agreement and what sort of employment contract or employment conditions they should be aware of before they actually agree to work for somebody.

MRS BURKE: You spoke of a workshop. Did UnionsACT hold it or was the Youth InterACT conference a broad forum?

Ms Sattler: You obviously do not know what the Youth InterACT conference was about.

MRS BURKE: No. For the sake of *Hansard*, could you give us a bit of the background?

Ms Sattler: A whole range of service providers in the community were invited to do workshops. We were one of those. We put in a submission, along with all of the other presenters. We put in a submission on behalf of our young unionists group, which wanted to run a workshop together with one of the Ministerial Youth Council participants. One of them was present, and young people co-presented with me at that workshop. That is where we were told by five participants in the workshop who currently worked in the takeaway food industry that they had commenced work when they were 12 and 13 years old and that one of them was currently working with an 11-year-old.

We had a discussion around at what age you could work in the ACT and what laws covered you if you were in fact under the age of 15. That has become a topic of great interest at the moment. We are now aware that, as part of the review of the Children and Young People Act, there is a whole review going on about employment law. My understanding is that you cannot work under the age of 15 unless you have sought certain exemptions. If you are in a family business, you can work. If you are doing things like lawn mowing and babysitting, that is not an issue, and we would not have an issue with that either, but clearly this young person was not fitting any of those exemptions. He was working in excess of 10 hours a week, which is also the limit allowed for those under 15 years old.

I seriously question that an 11-year-old is capable of being in a takeaway food environment. It is not appropriate. I do not care how mature somebody else thinks an

11-year-old is. We are talking about a year 5 primary school student. I talked to the young women, who already were 14, 15 and 16, about commencing work at 12 and 13 as well. They had not had their parents look at their employment agreement before they started work. In fact, they weren't even aware that that they had signed an employment agreement. That is not uncommon.

THE CHAIR: Was there any opportunity for bargaining in their employment agreement?

Ms Sattler: No.

Mr Shannon: Not in food and hospitality.

Ms Sattler: They were told what hourly rate they were going to be paid. As it turned out, the girls worked at different Domino's outlets. Domino's Pizza is the employer. They worked at different Domino's outlets and they were all on different rates of pay.

MRS BURKE: Clearly, the parents knew that their children were going to seek work there. Do you know whether in these cases they asked to see anything or just assumed that they would do the right thing?

Ms Sattler: The parents didn't ask to see the contracts. In fact, none of these young girls could remember what they were given, in terms of paperwork, to commence work.

MRS BURKE: Why is that?

THE CHAIR: Isn't there a regulation that says that the parents—

Ms Sattler: It is because most people are not given anything.

MRS BURKE: I was going to ask why the parents are allowing them to work if they know it is illegal—or don't parents know it is illegal?

Ms Sattler: Parents don't know it is illegal. They don't know that they should have any say in the employment contract. In fact, the calls to 2CN when this item was raised on Wednesday night indicated that parents had disagreements about the conditions under which some of the young people were working, but didn't even know themselves that they could approach the employer or raise the issue.

MRS BURKE: I would have been down there like a shot if it was me, but that is another matter.

Ms Sattler: Finishing work at 2.30 in the morning, things like that.

Mr Shannon: It is not uncommon for adults not to be aware of their own circumstances with regard to employment contracts.

Ms Sattler: That's right.

MRS BURKE: But wouldn't you be questioning it, as a parent? I am very concerned and alarmed at parents allowing 10-year-olds and 11-year-olds out at that time in the morning.

Mr Shannon: We are concerned about it. There has been a recent report that has been paraphrased in the media. I am not sure of the group who did it.

Ms Sattler: It is a national report on child labour.

Mr Shannon: And it shows substantial numbers.

Ms Sattler: There is a growth in child labour going on across the country.

Mr Shannon: Out of family necessity in lots of circumstances. We are not judging the parents.

MRS BURKE: No.

Ms Sattler: Our recommendation to the committee is that you ask some questions about how that review is progressing and that we ensure that we have absolute protections, in line with what the New South Wales government is trying to introduce in New South Wales to protect those under 15 years old.

My next issue is about journey cover. All commonwealth public servants and, by virtue of their relationship with Comcare, all ACT public servants are no longer covered for their journey to and from work. If they have an accident, at this point in time there is no coverage because federally the government has changed the legislation on that and there is no entitlement. We know that the ACT government is looking at trying to find alternatives to cover those people. We believe there could be a very detrimental effect on our compulsory third party scheme at the moment, certainly in the case of all car drivers. That is where that is going to have the pressure, basically. If you are not a driver, if you catch a bus or you ride your bike to work, what happens to you now?

THE CHAIR: The committee had a presentation on that from another witness at a public hearing, and therefore it is okay to talk about it. The presentation described the removal of this cover now in an individual circumstance. It described a person working in a telephone pit, so they are working away from their industry. When they worked in a telephone pit they were covered by their insurance whilst they were in that pit, but when they climbed out of the pit to stop and have a cup of tea at a bench next to the pit they no longer had coverage.

Ms Sattler: Or to get into the work vehicle, presumably.

THE CHAIR: Yes.

Ms Sattler: This is a big issue for our affiliates. I am getting calls from the public and emails from the public about this. Usually once a week in Canberra there is somebody who has either a car accident or some other kind of accident on the way to work.

MRS BURKE: Wouldn't they be covered under their normal insurance? I would like you, for the purposes of this committee, to tell us why you think it is so important for people in the public service. Most people aren't covered by their employer in terms of going to and from work. Can you outline to us why that concerns you?

Ms Sattler: Not true. Workers compensation schemes cover people to and from work and while they are at work.

MRS BURKE: I take your word on that. I don't believe that is wholly the case everywhere. If we could check on that, that would be really good.

Ms Sattler: Certainly as an employer, which I have been for the last 16 years, any workers compensation policy that I have had has covered my workers to and from work.

MRS BURKE: But lots of people aren't and would have to go by their ordinary car insurance or accident insurance, wouldn't they?

Ms Sattler: Not everyone has personal insurance. That is not realistic at all.

MRS BURKE: Car insurance, motor vehicle insurance.

THE CHAIR: Are you suggesting third party coverage?

MRS BURKE: I don't know; I am just asking. You are particularly earmarking public servants.

Ms Sattler: It is because of the Comcare changes that I am referring to public servants.

MRS BURKE: Yes, but why should they be covered to and from work, and was it part of their payment?

Ms Sattler: It was part of the full workers compensation coverage.

Mr Shannon: We are saying everybody should be covered in those journey senses, and our argument is that they traditionally have been.

Ms Sattler: That's right.

Mr Shannon: But the commonwealth have now unilaterally changed the circumstance for ACT public servants, as well as their own, to remove this form of cover. You can quantify quite clearly how many claims are made per annum against that. They will default to the CTP scheme as a result of workers comp being removed. So, in some senses, what we could argue is that, while it is hard to identify some elements of this discussion, it is not hard to quantify the number of claims that will suddenly default to the CTP scheme.

Ms Sattler: And it will place real pressure on our compulsory third party scheme here, which that insurer probably hasn't even anticipated yet, because we have a very high

number of federal public servants and ACT public servants here. From the point of view of the union that I come from, the Australian Services Union, this is very concerning, because nearly all of my members use their own vehicle for work purposes. Some of them take up to five or six journeys a day in their own vehicle.

MRS BURKE: I thought they were covered during the day. I thought you were specifically referring to going to work and, at the end of the day, home.

Ms Sattler: It is called journey cover. So it could be regarded that every time you leave a workplace and then return to it, it is still a journey.

MRS BURKE: Do you know that for sure, or are we just talking about going to work? I can clearly see you have got a problem, and I totally agree with you, it if it is through the day when you are going out and about in your vehicle and you are not covered, but, if you are going to and from work, I agree to disagree on that. I think everybody should take care. But during the day, if that is what you're saying has happened—

Ms Sattler: It has been a big issue for a long time in the non-government community sector with providers who have outreach workers.

Mr Shannon: And in some respects it relates to the industry sector.

Ms Sattler: It depends on who you are insured with as to what they will exempt and what they will include.

Mr Shannon: Or the industry you work in. Some industries define that you are in employment at all times during the day; others deem you only to be in employment when you are at certain locations or performing certain functions.

Ms Sattler: Some employers require workers—not community sector workers—to have their own full insurance cover.

THE CHAIR: Mrs Burke, are you suggesting that employees should then take out their own insurance coverage?

MRS BURKE: No, I am not. I was just trying to get clarification, chair, because I wasn't sure that Ms Sattler was referring to journey cover. It used to be called to and from work, or whatever. It used to be called something a bit different. Cleaning is a classic example, isn't it? You are going around town. You would have to say those people were covered.

Mr Shannon: Not if they are engaged separately site to site to site. If you are on a split shift basis, for instance, as a full-time employee, you would very much fall—

MRS BURKE: But do we know that for sure? Have you got proof and evidence?

Ms Sattler: I have had this as an issue in my industry for years. Different employers, depending on which company they are insured with, have different regulations about what time is covered. It has become a big issue for people who are on call-out. Every

time you're called out is a journey.

THE CHAIR: Mrs Burke, if you are concerned about the validity of the claim, the committee can easily write to the insurance companies.

MRS BURKE: No, it just seems that we have got lots of levels of stuff happening and points of clarification needed. Is it to work and from work? In what industries is it? Are people covered in the day? Maybe it is something outside of the purview of this committee in terms of losing our focus.

Mr Shannon: Part of our submission actually does try to make this issue of health and safety and the federal changes very much a part of the brief for the committee. We certainly agree with you that the changes federally have now created a morass of complexities that are going to make it very difficult for people.

Ms Sattler: Yes, it is a cost-shifting problem for the ACT government—a big problem for the ACT government. We just wanted to let you know that there is a lot of concern out there about that, and it will only take the first accident for the whole issue to blow up. I reckon it is a matter of weeks or months if we don't have some solution to that problem.

The next one I want to raise is that we already have a range of AWAs being offered in the ACT that are not fair, that eliminate penalty rates, that are actually reducing people's current take-home pay compared to what they were getting under their previous arrangements. I can tell you the name of three employers where that has happened in the last few months: IGA at Lyneham, food master supermarkets and Babar's at Woden. I don't know about Babar's in Civic, but I believe they are owned by the same people. In each case, the young people who are being employed—

MRS BURKE: I don't think they are now, sorry. I think there was a split and that is why there is one in Civic and one in Woden. Maybe there are two brothers; I don't know.

Ms Sattler: Okay. I know that young people in each of those workplaces were getting more take-home pay prior to the offer of the AWA. The case of the Babar's worker is of an existing worker offered an AWA which clearly undermined her award conditions. She was doing exactly the same number of hours, exactly the same shifts, and she was taking home less pay because she had her penalty rates cut, basically—simple as that.

MRS BURKE Are you talking about the hours of work engagement? Did she have her hours cut?

Ms Sattler: Everything was the same. Everything was the same and she was taking home less money. In the case of food master supermarkets, they are not paying award conditions at all. They are making up their own rates, and you get a dollar an hour increase every year you get older. They also employ people under the age of 15.

In the case of IGA Lyneham, they have three sites covering over 100 employees. They recently adopted AWAs, and basically those new AWAs have a single hourly

rate seven days a week and they have a new performance system built in. So they are ignoring the award rate, they are not following the award rate at all and they are not paying penalty rates. These people are clearly disadvantaged. They are existing workers, not even new workers.

The Lilac agreement that was mentioned nationally on radio this week by Kevin Rudd is another example. We can come up with examples every week. It is not hard to find examples. A young man who came and visited me last week told me about a catering firm in Fyshwick where any new employees were clearly being offered AWAs which were less than the award conditions that the existing employees were working on. So you had people working alongside each other doing exactly the same work, same age, and being paid less.

THE CHAIR: We have heard in presentations to the committee before that in a lot of these cases there was a gender imbalance as well with payments. Have you found that in these cases as well, or has it been more a general reduction?

Mr Shannon: The attachment to our submission has some detail on that issue. I think that we referred to it at the previous session.

Ms Sattler: I think you will find there are more women employed in hospitality and retail, that there is a gender imbalance already, but what I find in relation to young people is that it is across the board. I am getting as many examples of young men having these situations as I am of young women, so it seems to be pretty well across the board. If I came here next week I would have more examples, because people are actually contacting us to tell us about their situations. All of these people who have signed these AWAs are stuck with them; that is the law as it stands. In the case of the young woman at Babar's, she was basically told, "You haven't got a job here any more unless you sign it." If that is not duress, I don't know what is.

Mr Shannon: Except you can't have duress under the act because the federal government legislated out of the act any capacity for an employer to be deemed to be using duress.

Ms Sattler: I guess the point I am trying to make is that low-paid workers are actually in a worse position in a labour market where there is supposedly a whole range of skill shortages and therefore their bargaining power should have improved. The reality for all of these people is that they don't have the skills and the support to even know how to bargain. Most of my members who are advocates in the community sector do not know how to bargain industrially. They have been singularly unsuccessful at doing so for as long as I can remember. That is why they needed an award to protect them as a safety net. I would submit that cleaners, hospitality workers, retail workers and a whole raft of other workers who work in the light industrial area also need that safety net.

THE CHAIR: The committee was presented with a document at its last private meeting which indicated that the federal government had set about putting forward a safety net proposal that employees could trade conditions of service for pay rises, but there had to be some upward scope within it. My understanding is that the legislation hasn't been drafted or enacted yet. Do you have any information on that? Are you

aware of whether any changes have occurred since that statement was made?

Ms Sattler: Clearly, my evidence is to the contrary. People are not abiding by safety net conditions and rates of pay. People are being offered AWAs that go below that standard as we speak.

MRS BURKE: I hear all this and I hear what you are saying. I just wonder how much it has shifted under the new WorkChoices legislation, proposed changes and changes that have occurred, from as it was under the award system. There were still people doing wrong things under the award system.

Ms Sattler: We had some way of actually calling them to account under the award system.

Mr Shannon: We have no right of entry in many circumstances now.

MRS BURKE: When people come to you, to where do you direct them to take their complaint?

Ms Sattler: The Office of Workplace Services, and they come back again because they are so dissatisfied with the response they get from the Office of Workplace Services. The Office of Workplace Services is processing 30,000 AWAs a week. They don't have enough staff to deal with the volume now. They don't even read them. They admit they don't read them; they are not capable of reading them.

Mr Shannon: And nor has it been part of their obligation under the act to date to vet all the agreements as a matter of course. They were averaging a six-week delay in agreements that were being tendered pre certification for a check so that they could then go back to the workforce for a vote. So lots of employers have found it difficult even to get their agreements checked before they decide to put them to a vote.

As to the point you raised a moment ago in regard to the previous system and the current system, I think there were always corruptions of process, and there will be under any system. The issue of right of entry or the capacity of a government inspectorate function or whatever to have some intervention in the marketplace in that regard did always have some impact in those areas.

I think what you will see at the moment is that not only have our enforcement capacities been minimised completely but the government hasn't actually resourced wholesale any great inspectorate function. When the review was done of the restaurant industry in this town in the last 12 months as a result of some of the stories that came out there was a negligible number of prosecutions. Our view is that prosecutions are fundamental if you are going to start to clean up the behaviour in the marketplace. If you are just going to slap people on the wrist and then move on, then there is not going to be an incentive to change.

I think the biggest shift that you will have is in a lot of the personal arrangements that used to take place under the old award system whereby in a coffee shop, for instance, a young person might work on a lower rate than the award as a cash payment for the purpose of not having to go through the tax system, which was very common, as I

think we would all agree. That has now changed because those margins don't exist any more and the employers are actually putting them on the much lower rate and putting them through the tax system. So they aren't getting the cash-in-hand benefit of the differential between the cash payment and the old award rate because that is not there any more. They have actually, in effect, moved these people back and are putting them through the system, so those individuals are getting doubly hit, in effect, on their capacity.

Ms Sattler: I have been coming to these standing committees for over 10 years, advocating on behalf of young people who have a disadvantage, and I find myself here yet again talking about them having less conditions than they did, less protections than they did, in terms of work than they did 10 years ago. This is not a good situation to be placing our children in, and it is making young people extremely cynical about whether or not people actually care about their future. That is certainly the message I am getting from the young people who are approaching us.

Mr Shannon: And, to further address the fairness test, there are two threshold issues that have to be contemplated by this committee in regard to the response from the federal government. While ever the employer retains a capacity to bargain with their own employees in a manner that unions are precluded from, as we saw with the hotels association and the Lilac agreement, what you are getting is wholesale templating of common outcomes across the industry from the employers' side of the fence, while employees have been specifically precluded from doing that.

How can you have any fairness test in play when provisions are retained within the act that stop any employer being accused or held accountable for using duress to force someone to a lower outcome? That has been specifically codified out of the act. It is one of the few environments where an individual can't be held accountable for their behaviours in regard to another individual's rights, and the government federally is protecting employers. There can be no fairness if duress can't be tested, particularly if you are in a disempowered position to negotiate.

Ms Sattler: The other issue for me is that this change at a national level has given permission to employers who seek to do the wrong thing to go right ahead, and it has also made it quite difficult for employers who want to do the right thing, because it is now a minefield to negotiate. I was an employer who chose to do the right thing, and I certainly spent quite a lot of energy in the community sector trying to assist people to do the right thing in that area, because they are desperate to keep the staff. The biggest problem they have is skill shortages and turnover.

But even in that environment, as I mentioned last time, we have the large charities now going and getting industrial legal advice from large industrial law firms who are basically telling them to use WorkChoices. I can tell you that St Vincent de Paul, the Salvation Army and Anglicare have all been given that advice by those industrial law firms, and have to varying degrees—and Centacare; let's not leave them out—implemented aspects of the WorkChoices legislation against their current employees to reduce their pay and conditions.

THE CHAIR: The deputy chair and I were recently, in the last two days, in Queensland with the education committee and we had the opportunity of sitting in on

the Queensland parliament's last reading of their new Industrial Relations Act and Other Legislation Amendment Bill 2007. I thought I should read the reasons for the bill while you are here and see if you would like to make any comments in relation to how perhaps legislation could be drafted in the ACT to cover a similar theme. The reasons for the bill, as stated in the explanatory notes, were:

> Work Choices was passed on 7 December 2005, with most of the operative provisions commencing on 27 March 2006. Work Choices significantly reduces the ability of the States to regulate the industrial relations of corporations to which paragraph 51 (xx) of the Commonwealth Constitution applies (constitutional corporations), other than in limited and specific fields such as workplace health and safety, workers' compensation and child labour.
>
> The manner in which Work Choices overrides State laws has left jurisdictional boundaries unclear, necessitating adjustments to State legislation to clarify where State laws continue to apply.
>
> Ongoing reports about unfair work practices and reductions in terms and conditions for Queensland employees since the introduction of Work Choices necessitates measures to strengthen the protection of Queensland workers, including vulnerable workers such as those on low incomes and workers under the age of 18.
>
> In addition, the Bill implements the recommendation of the QIRC—

the Queensland Industrial Relations Commission—

> in its final report of January 2007 on the Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers, to establish a Workplace Rights Ombudsman to facilitate and promote fair industrial relations practices in Queensland and provide information and assistance to the public.
>
> The reduction in State jurisdiction over industrial relations since the introduction of Work Choices also makes it necessary to provide greater flexibility in the QIRC's structure to accommodate changing workloads.
>
> The emergence of a number of issues in the State system with respect to industrial relations, workplace health and safety and workers' compensation necessitate amendments to the Industrial Relations Act 1999, the Workers Compensation and Rehabilitation Act 2003 and the Workplace Health and Safety Act 1995 to improve the operation of these Acts in a number of areas.

There is quite a bit more in the explanatory notes—about another 30 pages, actually—but I think that gives you an overall idea of why they have now had to change the act in Queensland. Following that, my question to you is: do you think the ACT should have its own industrial relations act? If that is not possible, what do you think we may be able to pull out of our legislation to enhance safety for workers in the ACT?

Ms Sattler: Our biggest problem is that we do not have a state jurisdiction that we can fall back on, so we don't have the ability to set up our own industrial relations commission. So that is not an avenue that is actually going to assist us. We would be better served by looking at what they have done in the Northern Territory and Victoria. They have chosen to do two different things. Victoria has actually funded a

non-government organisation, Job Watch, to provide that function of support, advice and advocacy for any unfair work practices. The Northern Territory has employed an industrial advocate who is within the Northern Territory government.

We have made a recommendation that we need to do something urgently to set something up that will perform similar functions to both of those organisations, and we have suggested that the quickest and cheapest alternative is to fund us to provide a workplace advocacy service for anybody who is having difficulty, and to give them options to be able to negotiate their way through the mire at the moment.

Mr Shannon: If I can just refer you to our recommendations, probably 1, 4, 7, 10 and 11 in their entirety pretty much address the elements of your question.

Ms Sattler: It would be nice if we had the same ability as New South Wales and Queensland, because they have both moved very quickly to protect as many of their private sector and public sector employees as possible. The New South Wales government has done some very good things to protect its community sector and private sector employees, and that has managed to stem the flow of those workers out of those industries.

We are doing nothing at this point to stop the flow out of the community sector. I know that I come with a biased hat in terms of that, but I tell you there is a real crisis going on out there. You think the turnover is high in ACT government. We have the highest turnover of any jurisdiction in the country. The turnover is over 30 per cent per year. It is detailed in the report that I did to the ACT government, called *Towards a sustainable community sector workforce in the ACT*.

MRS BURKE: Has that been stemmed by the actions of New South Wales and Queensland?

Ms Sattler: The New South Wales government have put a whole lot of provisions in place to provide higher indexation increases, to have people covered under the state award system, to pressure employers not to resort to using AWAs, and is in fact tying funding arrangements to organisations on the basis that they pay people fairly, and they scrutinise those arrangements. We do not have anything comprehensive like that in place. We have a few bits and pieces that don't join together at the moment.

MRS BURKE: With government contracts you used to have to pay under the award rate, so I would say that the ACT government would be watching any contracts very closely.

Ms Sattler: They don't do so in relation to any tenders going to the community sector. I know that for a fact because I have met with Procurement Solutions. They are not using the provisions they use for everybody else.

MRS BURKE: Why not?

Ms Sattler: Because there has been a history of it being very poorly negotiated with the sector, and we have some large players in the sector who do not wish to have that happen.

Mr Shannon: And as the award system is collapsing underneath WorkChoices, it is very difficult to use the awards as a reference point now in a lot of circumstances. So there are wholesale groups gravitating out of any coverage of the award system.

Ms Sattler: So what do the procurement people look at?

Mr Shannon: How do you judge the litmus test?

Ms Sattler: What is the benchmark? That's their problem.

MRS BURKE: They would say that they don't always say that cheapest is best, but I would argue that as well.

Mr Shannon: No, that's possibly true.

Ms Sattler: That's right.

Mr Shannon: As to another element of your question, if I can, about the health and safety aspect—I think we touched on it briefly in the submission but it is not really our brief—the small business sector will be one of the primary losers in regard to the workers comp changes. I don't know what the committee's knowledge is on the detail of those changes, but one of the key elements of them is to allow bigger companies to self-insure under the federal system and move out of the state and territory jurisdictions.

My view and certainly Ms Sattler's view—we have had some discussions about this—is that this is not penetrating knowledge-wise to the small business sector in this town. They have no idea what is going on in regard to this issue, but, as we have our bigger insurers vacate the marketplace, they are going to be strapped with substantial premiums to offset the loss of that income. That hasn't been addressed at all in the context of this imposition by the federal government of changes to our system.

Ms Sattler: And most of them won't feel it, because the way workers comp operates is you anticipate what your costs in terms of wages are going to be 12 months hence, you give them the actual six months later, and then you won't find out that your premium has actually gone up until the new financial year. So they don't even know what they are going to get hit with. That will not just be small business; that will be the non-government community sector as well, because they are in the same marketplace, using the same insurers.

Mr Shannon: The sad reality of this issue is that it gives rise to probably a better understanding of the symbiotic relationship between employee rights and the small business sector. If you remove the level playing field for employees, you effectively destroy it for the small business sector. They used competitive wage neutrality as a derivative out of an award system that set everyone with a common benchmark so that they didn't have to compete on the commodity of wages and these other flow-ons now arising out of the workers comp changes. They now have an exhaustively competitive range of fronts they have to incorporate into their business strategy in a manner they have never had to do before, and most of it is absent of transparency. So they can't

forecast in some respects the elements of a lot of this to judge how they can structure their business operations.

THE CHAIR: Because they do not know what they are going to be.

Mr Shannon: Exactly.

Ms Sattler: Yes. Ask anyone who is trying to get administrative staff out there what they are going through just to get administrative staff and any of those sorts of lower paid positions within an organisation that do the reception, delivery, service delivery end of things. They are all struggling. They are not as worried about unfair dismissal as they are about how to find someone and how to keep them.

THE CHAIR: Just on that last remark, do you think this legislation has affected the retention of staff?

Ms Sattler: I think it has made a very unstable environment in terms of retention. We know that within the ACT the private sector has a huge problem getting enough skilled staff. The ACT government is losing a whole lot of its skilled employees to the federal sector because it is better paid, and the federal government is struggling to fill some of its positions. So we have three tiers here for which these changes to WorkChoices have exacerbated the situation, not improved it, and you have got poorer families out there who this year when they do their tax return are actually going to find they have had a drop in income, not an increase in income, and the $14 or less they might have got has barely covered the rise in petrol for them.

Mr Shannon: Frankly, in some respects the coverage of the debate has been a bit skewed with misinformation about the skills shortage and how that was going to counterbalance a lot of these impacts. In Canberra we have substantially an employer shortage. We have more people prepared to do traineeships as apprentices than we have people prepared to take them on. There isn't a skills crisis here, there is an employer crisis, and that is why we have a problem in the marketplace naturally settling these problems on their own terms.

THE CHAIR: One of the other things that the education committee looked at over the last few days was skill shortages. As yet, it is not ready for the website but as soon as we are able to put that information on the website we will give you a link to click on and see what is happening in Queensland with skill shortages.

MS PORTER: On page 5 of your submission you warn the ACT government that the new system of individual and performance-based contracting threatens the professional integrity of the public sector, including encouraging corrupt practice amongst public officials. You may have discussed this before.

Mr Shannon: We didn't.

MS PORTER: I didn't think so. I just want you to give me some more background to that.

Mr Shannon: If I can, I will refer you to an attachment I co-authored which was

prepared on behalf of the Australian Federal Police Association at the time I worked there. At the time the WorkChoices bill was introduced, it was a matter that we looked at as a different element of the debate, rather than the ostensible economic or employee rights debate, because this matter had been dealt with exhaustively overseas in regard to, particularly, the policing culture.

At the time, you may recall, the Department of Homeland Security was established by the American government as a response to September 11 and they attempted to put all their employees on individual contracts, on the basis that national security and the crisis determined that there was a need to do things quickly and not go through all these processes. The courts over there threw those arrangements out and said that they were contrary to the United States laws in regard to collective bargaining because they actually have rights for collectively bargaining, which we do not have.

If you look at the submission attachment that we have included for your purposes, you will note that the issue of public sector employees, most specifically in regard to law enforcement or other regulatory compliance enforcement roles, suggests that if you enhance the master-servant relationship between the individual employee and their employer you are in fact creating an environment where corrupt practices may actually start to play out. This is a particular concern for us in regard to the ACT contracting its policing function from the AFP.

I can give you a personal insight into this, and it has been in the press for some time. There has been an ongoing problem with the transparency of the relationship between the provision of the service by the AFP and the ACT government's capacity actually to get their head around it. This applied to the days of Kate Carnell and Gary Humphries and equally to the current environment with Mr Stanhope. Having made representations to both governments, I am aware of the fact that there is constant frustration about the transparency and knowledge that the ACT government have about what they are actually getting in terms of numbers or outputs as far as that contract goes.

Our concern particularly would be with the contracting of police employees in the ACT jurisdiction on AWAs, for instance. That will further enhance the relationship between those individual employers and the interests of their agency, as opposed to the interests of their employer, nominally being the ACT government in regard to that contract. You have seen examples, I think. I have included a couple of references in the submission there to where this matter has been addressed by both the United Nations and Interpol in regard to both their best practice protocols and their policy positions in regard to public officials. These sorts of arrangements are not appropriate in regard to maintaining a level of integrity or a corruption-free culture within the workplace. I think it is only natural that where you have supervisory levels within the public sector getting more and more relationship over the day-to-day activities of their employees you will find people appeasing their employer's expectation of them, rather than the person they may be delivering the service to.

Ms Sattler: And this is already happening now with superintendents in the AFP in the ACT. They are being offered AWAs. They are being offered very separate AWAs for which they are not allowed to reveal the contents to each other, and they are in fact performance-based AWAs.

Mr Shannon: The ACT government may well be precluded from transparency on the terms of those AWAs, even though they are, in effect, paying for them.

MS PORTER: You may have mentioned last time—it may have been another group that appeared before us on the same day; I thought I kept the right notes, but I wasn't entirely sure when I got upstairs which notes referred to which lot of witnesses—an incident about a person with a disability. I wrote next to that, "Isn't this against the law, regardless of whether it is the new law or not?"

Ms Sattler: It is against the law. I will tell you where I got that particular example. It was from Annette Ellis, who was approached by the young person's family. She was forced to sign an AWA. It was shortly after WorkChoices came in. I think it happened about April last year, and it was about a woman with Down syndrome who was given a contract and told she had to sign it. She signed it without being able to take it home to her guardians and parents, and she was locked into that AWA because of the nature of the WorkChoices legislation.

MS PORTER: So it was at the previous hearing you were at.

Ms Sattler: Yes.

MS PORTER: I thought it was. So it is against the law.

Ms Sattler: It is against the law. I don't know where that particular case is up to now. I know that Annette Ellis was advocating on behalf of that family. It did get mentioned in the federal parliament at that time.

THE CHAIR: A few minutes ago you said you would like to add to your submission by asking this committee to look at how the review was going into the Children and Young People Act.

Ms Sattler: There is a section of the act which talks about employment. I have talked to Ms Gallagher's office about that issue and apparently a statement was made on radio this week that that is being looked at by the children's commissioner. Linda Crebbin has been asked to look at that more closely.

Mr Shannon: Even though the ACT government may have limited capacity to legislate on industrial legislation per se, in this particular area similar to the New South Wales government there may be some options there. I don't know if you are aware that there has been a bit of a stink in the last couple of days about employers complaining because in New South Wales they are now prohibited from employing people under the age of 15 without penalty rates or working them onerous hours or otherwise. They are complaining about the fact that the New South Wales government is legislating to protect them in that regard.

Ms Sattler: We would urge us to do the same.

THE CHAIR: Thanks very much for providing your time again to us. The committee will go into deliberation after the estimates period. We will provide a copy of this

transcript to you as soon as we can, and any other questions we might have. The final report is due before October. We will get that report to you when we can.

Mr Shannon: And kudos to the Hansard people, because the *Hansard* we got was one of the best I've seen as far as accuracy goes.

MS PORTER: We have got a terrific Hansard.

Mr Shannon: I have never seen such an accurate *Hansard* produced—not for committee proceedings anyway.

MS PORTER: We have got a very good Hansard team.

MRS BURKE: Well done to the Hansard boys and girls.

Ms Sattler: It even had all of our interruptions over the top of each other; very impressive.

The committee adjourned at 2.52 pm.