LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

(Reference: Inquiry into Government Procurement (Secure Local Jobs) Amendment Bill 2018)

Members:

MR J HANSON (Chair)
MR M PETTERSSON (Deputy Chair)
MS S ORR
MR M PARTON

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 12 SEPTEMBER 2018

Secretary to the committee:
Mr H Finlay (Ph: 620 50129)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 12.01 pm.

WHITE, MR ALEXANDER, Secretary, UnionsACT

THE CHAIR: Good afternoon. Thank you for attending, Mr White. I draw your attention to the privilege statement and its contents. You are aware of that, Mr White?

Mr White: Yes, I have just read it.

THE CHAIR: I invite you to make an opening statement.

Mr White: Thank you. UnionsACT is the peak council for the ACT union movement, representing 24 unions and over 33,000 members. And many tens of thousands more workers in Canberra have their conditions of employment shaped by the work and the representation performed by the affiliates of UnionsACT.

UnionsACT supports the proposed local jobs bill and the code. UnionsACT has a long-held view that the ACT government procurement policy must be used to advance a progressive pro-worker social and economic agenda, entrenched good conditions, safe work places and high wages and promote local industry capabilities, skills, secure jobs and sustainable economic growth.

We are proud of the memorandum of understanding between UnionsACT and the ACT government on procurement, first signed by my predecessor and Chief Minister Stanhope over a decade ago. This MOU is responsible for the current procurement system, including the prequalification system, IRE certification and active certification.

Unfortunately despite the MOU the ACT government has demonstrated that is not currently capable of managing outsourced contracts, whether large or small, to adequately prevent labour rights abuses and unlawful workplace practices by its contractors. We have found widespread incidences of wage theft, unsafe work practices and bullying and harassment with many contractors of the ACT government. This includes cleaning companies, medical service companies, waste disposal, security, maintenance, construction, traffic control, event management, labour hire and more. Affiliates of UnionsACT, including the CFMEU and United Voice, will be able to give more specific information about these cases today.

For this reason we believe that the MOU, while having an overall positive impact on workers' rights and safety, is no longer fit for purpose and has not been sufficient to stop companies intent on callously exploiting workers or putting them at risk of injury. UnionsACT believes that the government should require more than mere compliance with legal minimums by contracting companies.

Canberrans rightly expect that when a company seeks the privilege of tendering and winning a contract with the government, and receiving taxpayer money, that contractor should be held to the highest ethical labour standards and safety standards.

We believe that this bill and the proposed code will ensure that future procurement

contracts are awarded to ethical contractors that invest in local job creation and obey the Fair Work Act and WHS Act, amongst others.

Companies who avoid these obligations and commit wage theft or put workers at risk of injury should not expect to win lucrative government contracts. We reject the misinformation published by the business lobby, including the Business Chamber and the MBA, regarding the bill and the code. These lobby groups represent the largest, richest and most powerful corporations and construction companies in Canberra. So it is not surprising that they oppose new measures that will increase job security and improve opportunities for local job creation.

Here is our response to some of the criticisms that they have made. They say the local jobs code will increase red tape. The code simply requires that businesses obey existing laws like safety laws and anti-discrimination laws. They say the code will drive up the cost of infrastructure and services. The only way the cost of infrastructure or services could increase is if the businesses were underpaying workers or not paying an obligation such as workers compensation. The audit regime is similar to the existing IRE active certification orders, so auditing costs under the code would only increase if the company were not complying with the law.

They say the local jobs code will conflict with federal legislation. It is impossible for ACT laws to conflict with the federal legislation, because federal laws overrule ACT laws. Furthermore, I have read the business lobby group submissions and there is not a single specific example of a conflict with a federal law as opposed to a generalised, unspecified concern.

They say the code will give unions access to worksites and records. The Fair Work Act and the WHS Act already grant union officials access to worksites and access to records. They say the local jobs code will decrease competition for local small businesses. The code will actually improve opportunities for local businesses, who will be able to compete on the same level playing field as big businesses. Companies that currently obey industrial laws and safety laws will no longer be able to be undercut by dodgy contractors.

Misinformation spread by the big business lobby benefits only those companies that fail time and time again to obey workplace laws. Fundamentally the evidence shows that a significant and growing number of businesses are choosing to disregard laws protecting workers' rights and safety. This has been demonstrated repeatedly in recent years. Many businesses have incorporated wage theft and non-compliance with safety laws into their business model. Existing regulators, federally and in the ACT, are under-resourced or unwilling to actively ensure compliance, and the business community knows it. This is happening in a context where employers are increasingly rolling the dice and taking a calculated risk that they will not be caught or that, if they are, few consequences for the employer will arise.

I will finish my remarks by re-emphasising that local businesses that do the right thing, invest in skills and employ local Canberrans should be preferred over dodgy contractors who steal wages and put workers at risk of injury. That is why we support the bill and the code.

THE CHAIR: One of the themes that have come out of some of the submissions is that this is going to have a compliance burden. You dispute that, but that is something that has been put forward. In your statement you talk about the largest, richest and most powerful companies. Can you see a system where we can have potentially a two-tiered system? For example at the moment you have a $25,000 contract amount. That is going to wrap everybody up, basically. But a lot of small businesses are going to find this difficult to be compliant with, potentially. They might not be the issue. Can we see a compliance way forward, and would you be open to it, whereby this is something that is targeting bigger businesses with larger workforces where compliance is not necessarily such an issue, but where the exemptions are there for smaller businesses or we increase the threshold from $25,000 up so that the small mum and dad operators, the smaller businesses, are not necessarily wrapped up in all of this? Your concern is that it is the rich and powerful, as you phrase it. Could it be a system that is targeting that end of town rather than being at the stage where it is basically everybody?

Mr White: Well the proposed bill and the code simply require compliance with the Fair Work Act and other acts. Those acts already apply to small business and big business. Therefore we do not think that there should be that distinction between large contracts and smaller contracts.

MR PARTON: So you do not think there is any major regulatory hurdle for a sole operator who is just churning along, working his 50 hours a week? Given the task of applying for this accreditation and going through the full audit, you do not see that as an imposition on that sole operator?

Mr White: You are giving a hypothetical, so maybe suggest an industry that this sole operator works in.

MR PARTON: I am asking you very clearly if this is going to be an imposition on sole traders. A larger organisation can just go to the legal team and say, "Guys, can you sort this out?", whereas a sole trader cannot. For a sole trader who is a chippie, or whatever he or she does, that is what they do. To go through this audit process and this regulatory process is going to be seen as an enormous burden for a sole trader or a mum and dad business. Would you agree with that, or not?

Mr White: No.

MS ORR: Mr White, you said in your opening statement that you saw opportunities for small businesses, given that it evens out a playing field. Given the scenario that Mr Parton has just put to you, would you see any benefits to sole traders from this system?

Mr White: I suppose when you talk about sole traders you are talking about sole traders who employ people, as opposed to a self-employed single-person enterprise who would not be employing people and who a whole bunch of the requirements in the code therefore do not apply to.

MR PARTON: Agreed.

Mr White: If they do employ people and they employ people locally, then part of the requirements in the code would mean that they cannot be undercut by large national organisations that may be able to provide lower cost requirements that would not be compliant with the code. This lifts the minimums to be the same for everyone, so you cannot have a situation where, for example, an out-of-state company that, because they engage in unlawful sham contracting and because they do not pay proper workers compensation, are able to undercut the local chippie, the self-employed sole trader chippie; and therefore a local small business is able to compete on a level playing field. They cannot be undercut by dodgy companies coming in from out of town.

MR PETTERSSON: I note that you support this bill. Are there any ways we can improve this bill, however?

Mr White: There are some ways that the bill could be improved. Rather than go through them, I will just refer you to our submission, where we discuss them. I note that United Voice and the CFMEU have also made some suggestions for improvements, and we would support those as well.

MR PARTON: Did you play any role whatsoever, in the process of actually drafting the bill?

Mr White: No.

MR PARTON: None at all?

Mr White: No. UnionsACT and affiliates have had meetings with the government and with public servants since the 2016 election to discuss their commitment to introducing a secure local jobs package, but no-one at UnionsACT has had any role in drafting the bill.

MR PARTON: But surely, in light of those conversations that you have spoken of, you have played some role in putting the bill together. Indeed, your input has played a role.

Mr White: Yes, we have had an input into the policy through a range of consultations that have been well known. Last year there were public consultations, and there was a second round of consultations earlier this year. As I said, since the policy was announced before the last election we have been having discussions about what the detail might be or look like. We obviously take an active interest in procurement.

MR PARTON: I read your submission with great interest. I find it fascinating that UnionsACT in this submission specifically refers to widespread incidents of bullying and harassment. It says:

> For an increasing number of businesses … breaking the law is a calculated risk.

That was your quote from your submission.

Mr White, I have to tell you that the reports that come to my office about bullying and harassment in this space are almost all allegedly perpetrated by unions on businesses.

And if ever there was an organisation that views breaking the law as a calculated risk, surely it would have to be your affiliate member the CFMEU. I find it difficult to believe that you could even say those things with a straight face. Time and time again, we see bullying as a way of life in this space, and often it is not from the building firms.

MR PETTERSSON: Is that a question or a statement?

MR PARTON: It is a question. I am asking Mr White to reflect on that. I am also concerned about the growing number of incidents of bullying, because I am hearing about them often. I am not sure that this is the way to stamp it out. You do believe it will stamp it out?

Mr White: I reject your characterisation about the CFMEU. I think it illustrates perhaps your and your party's ideological hatred of the CFMEU and unions generally. I think that there is widespread evidence of bullying and harassment in the construction sector being perpetrated by management and building company owners, subcontractors and the like, against working people. The CFMEU is at the front line of defending workers' rights and preventing bullying and harassment.

To answer your question, I think that the code and the various requirements would further enable the union to stamp out bullying and harassment in the construction sector in Canberra.

MR PARTON: And not just to get the upper hand in the wrestle of this industrial battle?

Mr White: I think that big business has too much power over workers, and one of the problems is that we have a Fair Work Act that is being abused by businesses to the detriment of working people.

MR PARTON: There are many quotes that we could choose from, but I would note that Judge Salvatore Vasta, Federal Court, described the CFMEU as the worst recidivist corporate offender in Australian history. He is not a Liberal member; he is a Federal Court judge.

Mr White: I would invite the Hon Mr Vasta to reflect on the banking royal commission and the many hundreds of thousands of criminal acts that banks have admitted to over the past couple of months and suggest that that is probably not the case any longer.

MR PARTON: So what you are saying is that at least someone is worse than the CFMEU?

Mr White: In any case, I do not see the relevance of this to the procurement amendment bill.

MS ORR: Mr White, you note in the UnionsACT's submission that you are aware of cases where workers' wages and conditions have been breached.

Mr White: Yes.

MS ORR: Are you able to elaborate on this, to provide specific examples where this has occurred?

Mr White: Yes. In my opening statement I said that the CFMEU and United Voice would be able to do that in their public statements at the hearing today.

MS ORR: Given that we will get to the detail later on, is there anything that you would like to add about how this proposed bill would improve situations where you have observed breaches of workers' rights and conditions?

Mr White: Certainly. One of the challenges that we have is to do with prompt rectification in the event of a breach of a workplace law. At the moment the Fair Work Act requires quite a lengthy process that can often take two years or longer in the case of an underpayment or wage theft. The vast majority of wage theft cases are determined on matters of fact. That is, you can look at payslips; you can look at the amount of money that entered into a worker's bank account and that left the employer; and so on. It is a matter of fact. Nonetheless, it takes many years to go through the Federal Court process with the Fair Work Act.

Under this code, if an allegation was made about an underpayment, an audit by a third-party private sector auditor could take place and determine whether or not an underpayment had taken place. Then the company would be able to quickly rectify that if they chose or an investigation could take place by staff of the registrar, and a similar action could be taken by the company to rectify the underpayment.

Both of those things would enable the faster resolution of a dispute than currently exists. Of course, the option still exists for the registrar to refer that to the Fair Work Ombudsman or for the union to pursue the matter in the Federal Court.

MS ORR: What do you see the benefits being to workers and business from having this faster rectification?

Mr White: Firstly, they get the money that they are legally owed. And it ensures, as I said, that the company, if they are committing the wage theft in a callous manner as opposed to an inadvertent manner, does not continue to benefit from their theft by gaining contracts through undercutting companies that do pay properly.

We understand that a significant number of wage theft cases or underpayment cases are inadvertent and are rectified very quickly, but a significant and growing number are not. One of the benefits of this code and the act will be that serious breaches will be on the public record and future contract awarding decisions will be able to refer to that record.

I would also say that that record will allow workers to determine whether or not they want to work for the company. It also gives information to potential workers for a contractor with the ACT government to decide whether or not they want to work for a company with a record of safety breaches, underpayments or other breaches of laws.

MS ORR: Would you then characterise it that this regulatory system that is being proposed is a way to bring more information into the public arena so business people and government can make informed choices?

Mr White: That would be a benefit of it. That is in one of the recommendations that came from the *Getting home safely* report, which was to put WHS notices for businesses that break workplace safety laws on the public record. The purpose of that is to allow the community, workers and other businesses to know the record of companies that they are doing business with or that they are sending their family members off to work for. Given that the registry and any sanctions would be made public, that would enable the community, as well as the government and other businesses, to know the record of the companies that they are doing business with.

MS ORR: Some of the submissions have indicated education and awareness-raising would be a better approach than the proposed compliance scheme. Do you have any comment on that view?

Mr White: The purpose of education is to create a state of knowledge for regulators to then determine whether or not in the event of a breach that they pursue some kind of prosecution or other compliance activity. Of course there should be awareness-raising as part of the introduction of the code.

We say businesses are well aware of their obligations, or they should be, in the four selected industries. Three of them are heavily regulated. Building and construction is heavily regulated already, and companies should be aware of their obligations. We know in the construction sector that the ACT is the most dangerous jurisdiction in Australia to work in. A significant number of licensed builders who run construction companies, who should be aware of their obligations under the safety laws, do not follow those laws.

Similarly, security is a licensed industry, but unsafe work practices and wage theft take place. It is suggested that companies that run a licensed business should be aware of their obligations, but they continue to break the law. For these reasons we think that education is not sufficient. In many cases it is the excuse by big business lobbies and regulators who want to turn a blind eye to law-breaking.

MS ORR: If I have understood your answer correctly, you believe that there is current awareness and education has worked to make businesses aware of their obligations under existing regulations?

Mr White: Yes. If this code comes into law we believe there should be an awareness-raising program about the obligations it creates. But we believe that the businesses that contract with the ACT government should already be well aware of their obligations.

MR PARTON: Mr White, you have indicated, in your submission that for large projects there should be mandatory quotas for employment of Indigenous workers, women and people with a disability. I know you would not have made that suggestion without giving it a lot of serious thought. I am keen to hear more from you as to how you see that working.

Mr White: Certainly it can be written into contracts. The light rail is a good example of how that can be done. That recommendation comes from longstanding national union policy about procurement. We note that many governments around Australia agree in principle with that.

In practice you would do that by simply having clauses in the contracts about proportions of staff that need to be employed and then have regular periodic report-backs. The company would need to report on their workforce profile and whether they have met their target.

If you had a 10 per cent apprentice quota and there were 300 workers on the project, it would be pretty easy to do, that is, are there 30 apprentices? Similarly if there were a mandated number of Indigenous workers you would be able to say at six months or 12 months what the number should be.

MR PARTON: Are you aware of any specific individual larger projects around the country where they have gone with those sorts of quotas?

Mr White: I am not aware of any specific project, but I know other jurisdictions have these policies requiring the employment of Indigenous workers, disabled workers and women, amongst others.

MR PETTERSSON: You mentioned other jurisdictions have used procurement to prescribe behaviours in industry. Can you give some examples of the sorts of behaviours and industry policies they have sought?

Mr White: There are two or three well known examples: the first obviously is the federal Building Code. It is a voluntary procurement code and it details in quite a prescriptive nature the workplace relations and obligations of contractors who wish to provide services to the federal government.

The commonwealth cleaning guidelines are another example of a procurement code introduced by the former federal government which mandated particular minimum wages to be paid, right of entry, inductions, a whole range of prescriptive detail in terms of the contract terms and the behaviour requirements of the companies involved.

Most jurisdictions, particularly the jurisdictions that have recently had a Liberal government, have some form of local building code. For instance, Victoria has a building code that is relatively similar to the federal Building Code and which has very prescriptive requirements about workplace relations and safety. I would say that most of those, other than the commonwealth cleaning guidelines, were to the detriment of workers' rights and safety.

MR PETTERSSON: We have received evidence from several other submitters that they doubt that there is substantive evidence of insecure work practices in the selected industries of construction, cleaning, traffic control and security. Do you agree with this sentiment?

Mr White: UnionsACT does not agree with that sentiment. We believe there is a very

serious problem with insecure work and with noncompliance with the Fair Work Act and the WHS act by companies in the ACT. This is not something that we have made up; there have been two audits by the Fair Work Ombudsman in the ACT, both of which have found over 40 per cent of businesses in the ACT were not compliant with the Fair Work Act.

WorkSafe has also conducted audits in the construction sector for high risk industries, including scaffolding and cranes, and found widespread noncompliance. For one audit there was 100 per cent noncompliance with the high risk licensing laws and WHS laws. It is also conducting an apprentice audit at the moment and finding quite widespread noncompliance for the supervision of apprentices.

These are all federal or ACT government regulators finding noncompliance with the law. We also state that the ABS has statistics about the prevalence of insecure work. Over 10,000 workers are employed under labour hire and about 30,000 are employed without any leave or other leave entitlements.

MR PETTERSSON: Why is it that these other submitters cannot see this?

Mr White: I suggest it is in their interests to deny that insecure work is a problem.

THE CHAIR: The legislation tabled says at 22P that you can get an exemption from the code where the entity satisfies the registrar that complying with the requirement would result in the entity not complying with the commonwealth law. So you can get an exemption because there is going to be conflict, according to this legislation, with commonwealth law. You said that is not possible. How do you explain the statement that it is not possible for this to interact with commonwealth law if the legislation itself says it might require exemptions?

Mr White: On our view this anticipates future laws being introduced by a jurisdiction—the federal government—that may conflict with the code.

THE CHAIR: So you do not think that there are any existing laws; you think just—

Mr White: I do not think anything in the code or in the bill contradicts or conflicts with the Fair Work Act or any other federal law.

THE CHAIR: Mr White, thank you very much for appearing this afternoon.

Mr White: My pleasure, thank you.

THE CHAIR: We will send you a draft of *Hansard* to look at. If there is any follow-up, the secretary will be in touch.

HOPKINS, MR MICHAEL, Chief Executive Officer, Master Builders Association of the ACT

BERRY, MS ASHLEE, Legal and Compliance Director, Master Builders Association of the ACT

THE CHAIR: I welcome Mr Hopkins, CEO of the MBA, and Ms Berry, the legal and compliance director. I draw your attention to the pink privilege statement to make sure you are aware of that. Does either of you have an opening statement to make?

Mr Hopkins: Yes, we do. Thank you for allowing the MBA to speak to the committee today. We represent builders, civil contractors, subcontractors and the professionals who are all members of the MBA and who will be impacted by these proposed laws. Before we start we would like to acknowledge the good work of the directorate staff who have been working with industry on the finalisation of the plans to implement these laws. These laws are going to have a very significant impact on industry and on the government directorates that will have to implement them. It is important to acknowledge the very good job that the staff are doing to try to implement very bad laws.

However, we would like to express our disappointment that many of the policy issues that we have commented on or raised, in particular the conflict with the federal laws, have been ignored by the government to this point. We are not surprised that our comments have been ignored because we know that the origin of those laws was a promise made between the government and the unions prior to the 2016 election. These laws have been a fait accompli since then since then, I suspect.

Our comments today seek to highlight the impact of the proposed laws on small and family businesses. On behalf of those local businesses, we strongly object to trading off a political promise made with one or two unions for a significant cost burden, red tape and economic impact on the many thousands of small and family Canberra businesses who will be paying for that promise.

We would like to highlight three key areas of concern: firstly, the proposal laws duplicate existing laws. There are already numerous laws, including the Fair Work Act, that require businesses to meet workplace standards, safety rules and building laws. Issues such as safety are already assessed as part of the ACT procurement process by giving a weighted assessment to these issues before government awards a tender, and that is appropriate.

But these duplicate laws will add to existing laws by imposing an additional requirement to hold a code certificate, in addition to the current IRE certificate, to undertake an additional audit, which will cost approximately $1,000 per business per audit, and make the workplace records open for inspection by a union 24 hours a day, seven days a week, with no stated notice period or requirement to establish grounds for that inspection.

I go into a little of the detail about how this will impact businesses. There are currently more than 1,300 construction businesses eligible to tender for ACT government work. At the moment, they are not able to prepare for the

implementation of these new laws because government is not ready with the approved auditors, the application forms and the necessary processes and systems to deal with the 1,300 applications for code certificates that are going to be required to transfer existing businesses from the current system to the new system. And that is before you take into account the many thousands of businesses that will be captured by these laws outside of the construction industry.

Government is expecting 1,300 applications to be made, audited and approved in approximately eight weeks—assuming that the laws pass in November and commence on 15 January—in order for businesses to be compliant with these laws. Either hundreds of businesses will not have code certificates approved in time, leaving them ineligible to tender for government work, or government will suspend tendering until all the applications can be processed, starving the local industry of work. This is just unacceptable, I think.

Secondly, the cost of complying with the duplicate laws will be passed on to government through higher tender prices. But more concerning I think is that the price of schools, hospitals and other community infrastructure over time will increase because eventually the number of tenderers will be reduced as many come to the same conclusion that some already have: that it is too hard for small and family businesses to do business with the ACT government.

Thirdly, our primary concern from day one has been about the conflict the ACT laws will set up with the federal law. The federal law includes the Fair Work Act and the code for tendering and performance of building work 2016. However, we are also concerned that they impinge on basic privacy laws. It is important that there be regulatory certainty. That is a key point.

With so many local businesses relying on commonwealth construction work or ACT government construction work which includes commonwealth funding or fully ACT government-funded work, the regulatory uncertainty created by these laws is unsatisfactory. We will outline the key areas of conflict with the federal laws in our submission, which is due to the directorate later today.

We note that the proposed laws include a process that would allow for an individual or a business to apply for an exemption where the conflict exists. However, the administrative burden will be felt greater by small businesses because generally they do not employ an in-house legal department that can help them navigate the complex relationship between the federal and the local laws.

Because the federal building code 2016 applies to all commonwealth-funded work, including ACT government work with commonwealth funding, the ACT law should remove any areas of conflict up-front rather than establish a process for an individual business to apply for an exemption.

The last point I would like to make, though, is just how we believe these laws will operate in the real world. We can draw upon experience that has been reported by our members to us in respect of how the MOU between UnionsACT and the government has operated.

Most local businesses have not voiced their objection directly to the government about the operation of the proposed legislation because of the fear of retribution and bullying that has already been displayed by the union. Our members have already reported that unions are busy visiting local builders and subcontractors, bullying them during EBA negotiations, claiming that they will soon have the power to shut them out of ACT government contracts when these laws are passed.

To address our concerns we request three things: firstly, that the government remove any conflict with the federal procurement code or federal laws; that the government review the draft code and the model contract terms to minimise the regulatory burden on small and family businesses; and that the government extend the commencement date by six months to allow sufficient time to review the proposed laws, develop the necessary supporting documents and administrative processes and to educate local businesses on their new obligations.

THE CHAIR: Thank you, Mr Hopkins. Ms Berry, do you have a statement to make?

Ms Berry: No, nothing further to add. For the record, I have read the privilege statement.

THE CHAIR: Thank you. This question stems back to the MOU. I know comments were made previously about the MOU being a union tip-off and pay-off. It is characterised in your submission and in your statement as a rare mechanism because it is duplicating existing laws whereby in this case the CFMEU or other unions can basically demand or influence a company to sign an EBA because otherwise that union will influence and possibly prevent that business from being able to get their certificate of compliance, thereby excluding them from work with the ACT government. So you see this as a conflict of interest for those unions that are going to now be given more power. Basically this is a mechanism to enable them to get more businesses to sign EBAs. Is that essentially what you are saying?

Mr Hopkins: That is what our members report to us, that that is how the MOU operates in the real world. I would suggest that that has been happening for quite some time—

THE CHAIR: Right.

Mr Hopkins: and that these laws will just entrench that practice, if you like. I would also go back to the first part of your question where you said that these laws duplicate existing laws. If you were to write a dictionary definition of "red tape", I think you would start with a law that requires you to comply with existing laws. There is simply no need for duplicate laws. If there is a problem with compliance with existing laws, I suggest we focus on ensuring better compliance with those existing laws. We would definitely support, whether that is resources, education or whatever it might be, a whole range of industries complying with their obligations under existing laws. I do not see how a law saying you have to comply with those laws is going to substantially change anything.

MR PETTERSSON: I have a supplementary. You have claimed that unions are threatening your members with exclusion from ACT government work. By what

mechanism could that possibly occur?

Mr Hopkins: At the moment? At the moment the MOU—

MR PETTERSSON: How would that occur?

Mr Hopkins: How does that occur on a site? I think the statement I made in my opening statement is probably fairly typical of the script that will roll out on a construction site.

MR PETTERSSON: What I am asking is: your members are concerned about that. Is there any reality to their concern?

Mr Hopkins: Absolutely we believe that what our members have reported to us is factual and is what happens in the real world under the operation of the MOU.

MR PETTERSSON: But what mechanism would allow a union to block someone from tendering for ACT government work?

Mr Hopkins: Under the MOU or under these laws?

MR PETTERSSON: Either.

Mr Hopkins: Under the MOU, because the MOU gives them the right to do that. We have expressed publicly previously that it gives them a right of veto over government contracts.

MR PETTERSSON: Explain to me where the right of veto comes into this?

Mr Hopkins: Again, under the MOU or under these laws?

MR PETTERSSON: We will keep it under the MOU. We can stay with the MOU.

Mr Hopkins: Yes.

MR PETTERSSON: Unions are consulted; they do not get a veto. So why do you claim they get a veto?

Mr Hopkins: We have stated a number of times, and I think the bigger point here is that no third party should have a role, even if it is just to be consulted, when it comes to awarding government contracts. When we are spending taxpayers' money, that is a decision between the government and the contractor. I do not see how any third party, whether that be a union or the MBA for that matter, should have a role in that procurement decision. Whether that be a consultation role or a veto role—we can talk about the nuances of that—either way, it is inappropriate. There should not be a third party sitting at the table when government contracts are handed out.

MR PETTERSSON: I would like to stay with the idea that you have claimed there is a veto by unions because it seems you have backed away from that the moment I questioned you on that. Do unions have a veto on ACT work?

Mr Hopkins: Under the MOU they do.

MR PETTERSSON: How?

Mr Hopkins: I would be happy to send you further information about that outside of this. It is inappropriate—

MR PETTERSSON: I think this is an appropriate forum to discuss it. You have made a pretty big claim. I am asking you to explain how that would work and you are not answering.

Mr Hopkins: I think the answer has been in your question. The MOU gives them role, a right to be consulted in these decisions. Why would there be a right of consultation if it were not with an aim of influencing the outcome of a procurement decision? It is simply inappropriate. It should be a decision by the government and the contracting parties. I do not see why any third party should be consulted on that decision.

MR PETTERSSON: I think we have the answer I want.

MS ORR: Mr Hopkins, you were talking about red tape and having a compliance law to comply with laws. I believe your words were "the definition of additional red tape"?

Mr Hopkins: Yes.

MS ORR: I am actually struggling with that idea a little, given that we are seeing countless examples, not just in the ACT but Australia wide, where businesses are not complying with their obligations. We have seen evidence in the submissions of examples where that has not occurred and we have also heard evidence that businesses are aware of their obligations. But given that businesses, you would think, are operating knowing their obligations—and we have evidence that they are not adhering to those obligations—how is asking them to prove that they are, given that we have gone with the soft-touch regulation to date and are moving to make sure that we are getting compliance, not reasonable?

Mr Hopkins: Because there is an existing law that would already deal with that issue. I think that there are two issues in your question. One is whether the regulatory framework is sufficient to deal with the noncompliance, and the second is whether there actually is noncompliance in the first place. If we put that issue to the side, let us assume that there is even one business that is not complying. Our point is that there is existing legislation that allows government to enforce compliance.

A second law is not going to do anything except add more red tape, particularly for small and family businesses who do not have the big budgets to employ lawyers or in-house legal teams to work through all the administrative process. The Fair Work Act, for example, deals with a lot of issues that this new procurement code would address as well.

MS ORR: We heard evidence from our last witness that one of the benefits of this

legislation and the code that it will enable is that it will bring compliance closer and earlier in the process so that it is not as drawn out, given that compliance investigations and compliance rectifications can take years, which is not actually a good outcome for workers or business, I would argue. Given that we have an opportunity under this code to put in place a very transparent process that is quick to rectify any issues for all parties involved, I do not see how that is a burden, given that we know we have an issue there.

Mr Hopkins: The regulatory burden point that I made is that government is giving 1300 businesses eight weeks to comply. I just do not see how that is going to happen. The two scenarios I outlined that I think will happen are: either businesses will not be ready for 15 January and they will not be able to tender for work or otherwise there will be some sort of suspension of government contracts until people are. That is the regulatory burden point I made.

MS ORR: Your other comments about this being duplication are not the point you were making?

Mr Hopkins: I think that is a valid issue as well, yes. I am not maybe exactly understanding the point of the question.

MR PETTERSSON: I notice in your submission quite a large focus on the idea of red tape. But in recent times I have also noticed an increase in commentary from the MBA calling for increases in building quality and new licensing requirements. I was hoping you could explain to me how the MBA determines what red tape is.

Mr Hopkins: I suggested a definition previously. I think in the area of building quality—and if you take trade contractor licensing for example, which is something we have called for—there are no existing duplicate laws in that area. There are no existing requirements for a trade contractor to be licensed under some other existing law. So we are calling for one law to be put in place.

Our point here about the duplicate laws is that there are already existing laws that deal with these things and the government is proposing an additional one. I hope that explains why we have been calling for a law in building quality and not calling for a duplicate law in procurement. If there were an existing satisfactory law that dealt with trade contractor licensing we obviously would not be calling for a second one to be introduced.

MR PETTERSSON: I appreciate the answer. Would not, however, adding this new regulation, with the lack of current regulation, increase costs?

Mr Hopkins: Not over the long term because I think all stakeholders in the building quality area acknowledge that there is a problem. At the moment the cost of poor building quality is being borne often by owners and purchasers of units because of the poor building regulatory framework we current have in place. I think we are comparing two areas of our industry, one where there is, in terms of building quality, very low levels of regulation, and another area around safety and compliance with workplace laws where there are existing laws in place.

MR PETTERSSON: Actually you raise an interesting point that I have been thinking about as you have been talking. You keep saying that this is duplicating existing laws. Is your problem that we are solely duplicating existing laws or that we are trying to add in new powers?

Mr Hopkins: New powers for whom?

MR PETTERSSON: In terms of procurement process, are we reaching for new powers or are we trying to influence industry more than already exists, or are we simply duplicating things that are already in place?

Mr Hopkins: We are certainly duplicating things that are already in place. Sorry, I cannot answer on behalf of what is motivating the government to do this. We have outlined that there are existing laws in place and there is an existing procurement process in place which deals with a lot of issues we are talking about. Our point is that by going this extra step you have tipped the balance. We are not achieving any greater outcome except adding a lot of extra cost burden and regulatory burden to small businesses.

MR PETTERSSON: We are not simply duplicating things; we are actually trying to achieve new things, in your opinion?

Mr Hopkins: I do not think I can answer on what the government's objective here is. We have commented on the laws as we have seen them and pointed out the three areas of concern in what they are trying to achieve, in how we think they are going to roll out on the ground.

MR PARTON: We have seen a number of submissions to this inquiry, some from peak bodies like yours and some from unions. And there have been a couple of submissions from businesses. I guess my question to you is: in your sector, if so many of your members are so dead set against these laws, if they are so bad, why have we not seen a flurry of submissions from them? Where are they? Why have they not submitted to this inquiry so that we can talk to them in this forum?

Mr Hopkins: That is simple, because they are scared of the retribution that would come. You put yourself in the position of a small business that may rely for their livelihoods on work from the ACT government. Would you stand up and criticise them and then try to request work from them and also criticise the union who is on your site maybe daily or weekly?

MR PARTON: But is that fear real? What examples, anecdotal or otherwise, can you give of that sort of bullying, standover activity?

Ms Berry: Perhaps if I can answer, because it is my department that receives the calls from members if not on a daily basis certainly on a weekly basis. Those threats stem from, "We will make sure that no further contracts will be awarded if you don't sign an EBA," or, "If you already have an EBA filed in the commission we want you to withdraw it because it's not a CFMEU EBA," through to, "We'll be here every day. We'll find safety problems and we'll hold things up until you do what we say." Our members, when approached to make submissions, said that there is no way that they

would put their name to a publicly recorded submission, for that reason.

Mr Hopkins: And we have seen that around the streets of Canberra. We saw a protest at the construction site next door to here over alleged wage theft. That is a good example. That was a protest about an allegation. There was no presumption of innocence in that protest.

What if the next government tender relied on a decision about whether or not there was an actual breach of the law there? There should have at least been a presumption of innocence and a process gone through under the Fair Work Act before there were any ramifications, even if that was public ramifications.

MS ORR: I have a supplementary to Mr Parton's question. Mr Parton asked where the submissions from your members are, and you said that they did not want to put them publicly on the record. One of the functions of the committee system is that you can keep your submission confidential; it does not have to go on the public record. Given that that function is there, and you have both said you understand about privilege—the MBA have made submissions to numerous committees—one would assume that you are aware of that. Your members could have submitted using those confidentiality and privilege provisions, and they still have chosen not to.

Mr Hopkins: I understand what is on the line for a small business here: a small business, which may be a mum and dad and maybe their children working in the business, whose whole livelihood—their house, their reputation, everything they have worked for—depends on winning the next ACT government contract. I would find it very hard to convince even one of our members that they should stick their neck out as far as making a written submission to the government and claiming the things that we are claiming on their behalf.

MS ORR: A written submission to this inquiry, though, is to the parliament; it is not to the government, and it would be held in the highest confidentiality, if that were what they requested. The tender process is separate from this committee. There is no reason—and I hope you are not suggesting—that the parliament would hand over that information to the tender people in order to bring those two processes together.

Mr Hopkins: I am not suggesting that. I am just highlighting what is on the line for a small business here. Clearly, that fear is real, because we receive the phone calls. I have received those phone calls myself, and we have not seen the written submissions.

MS ORR: On the submissions, we did receive three submissions from businesses. Given the conversation we have just had, I will not go through them. They are publicly available; their names are on the record. I will not ask if they are members or not, given the conversation we have had. But of those submissions, one said that this would actually level the playing field and make it possible for small business to compete more easily with big businesses that can undercut it. Another said that they have concerns, and they identified themselves as a small business that has done government tenders. They indicated that they had concerns but they acknowledged that, with the IRE process that was in place, although it was hard, they could see why it was there. One would assume there is mixed support from them. One said not so flattering things, and said they had greater concerns.

Given that we have a mixed range of views from the people who have submitted, how does that fit in with the line that you have just put forward that people are intimidated to the point where they do not want to submit to this process of inquiry to raise their views, even though they would have confidentiality in doing that?

Mr Hopkins: I point out that you are right; you have received three individual submissions from an industry that employs 14,600 people. You have also received three submissions from the master builders and two other industry associations that collectively represent 10,000 businesses. I cannot talk on behalf of those three individuals who made submissions. I think the power and weight of the collective voice of the number of industry groups says much more about our shared concerns. I would invite you to meet with those three individuals and talk in detail about their concerns.

MS ORR: As I have pointed out, one of the submitters said that this would level the playing field and make it possible for their small business to compete. Do you have a comment to make on that view?

Mr Hopkins: Yes. It would be a contrary one. I think the level playing field is a good point, because of the regulatory impact that is being proposed. I suspect that these laws will be far easier to comply with for a tier 1 builder or a multinational company that employs a legal department headquartered in Sydney that will be all over this, and will be compliant from 15 January. I do not see how a mum and dad small business is going to be able to be as compliant as quickly without sustaining a proportionately larger cost to their business. I would suggest that this does the exact opposite of levelling the playing field.

MS ORR: There has been quite a discussion on cost. Can you very clearly articulate for me what you see as being the additional costs from this proposed legislation?

Mr Hopkins: That is two-fold. The cost of infrastructure will be impacted two-fold. There will be some direct costs of applying for a code certificate. Probably the biggest of those is the cost of the audit. A thousand dollars would probably be the minimum price at the moment. But I would not be surprised, given the very small number of auditors and the very large number of businesses that need code certificates, if that price were to increase.

The greater cost impact, though, will come if businesses are discouraged from tendering for ACT government work because of the cost burden. I accept that that is a hypothetical. We do not know for certain what will happen into the future. If that tendering pool is reduced and competition is reduced, prices ultimately will increase.

THE CHAIR: Moving back to the veto element, the MOU contains a paragraph that prior to any contract being awarded—this is 4.3—the list of tenderers for each contract will be provided to UnionsACT and/or the relevant union—in this case, the CFMEU, I imagine, for your industry—as identified, and each relevant union from the receipt of the list is to advise government of its views as to whether the applicant meets its WHS, employee and industrial relations obligations. I assume that that is the sort of element that you will see in the MOU flowing through to the legislation that

you are concerned about there. Essentially, it is about their power to influence the government to say, "We like this business and we don't like this business," for whatever reasons, and that precludes people from that tender. Is that the issue?

Mr Hopkins: Thanks for highlighting it. I think you summarised it well. It also gives me the opportunity to maybe support one part of this package that we would be happy with, and that is the government's commitment to abolish the MOU. We have long called for that. We would very much support that. If one thing may be achieved through these laws, that would be putting greater transparency and openness in the whole ACT government procurement process, which is certainly not achieved at the moment through the MOU.

THE CHAIR: I note that much of this legislation requires other elements, including the code, to come forward by disallowable instrument.

Mr Hopkins: Yes.

THE CHAIR: I assume that you would be hopeful that the relevant minister would consult with industry and industry groups in the formulation of that?

Mr Hopkins: We certainly would be hopeful that there would be consultation, but we would also be hopeful that there would be adequate time for not only the MBA and other industry groups but also the actual contractors involved to understand what is going to be required of them and their new obligations; hence our call for a six-month delay to give those 1,300 construction businesses time to get up to speed with their new obligations.

MS ORR: Mr Hopkins, has there been any consultation to date that you have participated in on the supplementary instruments to the legislation?

Mr Hopkins: There have been two public consultation processes on the package which we have made submissions to, one that we have made a submission to already, and one which is due today, including this inquiry hearing.

MS ORR: So you are in the process of providing feedback on any supplementary instruments that may come as a result of this legislation?

Mr Hopkins: Yes. We have certainly been engaged in those formal and public opportunities that we have had, not through any other process that we have been afforded.

MS ORR: I wanted to clarify that. You said that you hoped the government would consult on this, but it sounds like they are doing so.

Mr Hopkins: Yes, there is a consultation period that is open at the moment, with submissions closing today.

MS ORR: My other question went back to—

THE CHAIR: I am afraid, Ms Orr, that we have run out of time.

MS ORR: We still have 15 seconds. I can talk fast.

THE CHAIR: It is not the question that is the problem; it is the answer.

MS ORR: It could be a yes or no answer.

THE CHAIR: I would like to thank you for appearing today, Ms Berry and Mr Hopkins. You will be sent a draft of *Hansard* to review. If there are any other matters, the secretary will be in touch. I would like to thank you for appearing today. The committee will reconvene at 1.30 with the Canberra Business Chamber.

Hearing suspended from 1.01 to 1.30 pm.

HENDRY, MS ROBYN, CEO, Canberra Business Chamber
HOOD, MS LUCIE, Workplace Relations Manager, Canberra Business Chamber

THE CHAIR: Welcome to the committee inquiry into the Government Procurement (Secure Local Jobs) Amendment Bill. I draw your attention to the pink privilege card, which I know you have read before.

Ms Hendry: Yes.

THE CHAIR: Would you like to start with an opening statement?

Ms Hendry: Yes, I would. My colleague Lucie Hood, who is the workplace relations manager at the Canberra Business Chamber, is on the phone. She is on leave at the moment, so has dialled in to participate. She is our subject matter expert.

I would like to read some opening remarks for accuracy. The chamber's position, as outlined in our submission dated 31 August 2018, is generally supportive of the government's stated procurement objectives, which are to ensure that ACT government contracts will only be awarded to those businesses that meet their industrial relations and workplace obligations in all respects. The chamber supports the ACT government intent to allow only ethical organisations that uphold workplace standards to participate in the government's procurement processes. We are pleased that in the lead-up to the 2016 election the ACT government announced that it would not be continuing with the MOU with the unions regarding ACT government procurement practices. Our concern with this agreement was always one of transparency and fairness.

Our concerns with the Government Procurement (Secure Local Jobs) Amendment Bill 2018 are based on three major concerns: increased red tape that will have a detrimental effect on local business and local jobs throughout the ACT and will drive up costs for infrastructure and services because of high compliance costs; reduced competition; and conflict with federal legislation, including the Fair Work Act 2009 and the 2016 code for the tendering and performance of building work.

The ACT, as I am sure the panel is aware, has 97 per cent of businesses with 20 or fewer employees. These businesses do not have the capacity to take on extra administrative, compliance and regulatory burden, particularly when existing regulation directed towards employers meeting their workplace obligations is adequate.

We are concerned that the proposed code could give rise to inconsistency and conflict with the federal building code, in particular, freedom of association, privacy considerations, induction provisions and concerns around the interaction of the code and the Fair Work Act 2009, the commonwealth act, and relevant workplace health and safety laws. We believe that the amendment is unnecessarily prescriptive on elements around managing inductions, providing union information and having a delegate that can call meetings at any time, on any topic, for an unspecified time. The delegate would also have unnecessary access to private employee files.

We also refer to the proposal that provides the ability for anyone who on reasonable grounds is of the view that an entity has not complied with the code to make a complaint. We are of the view that there must be further protections built into the proposal to support business. Business has no right of reply to accusations made, which denies a fair process.

It is for these reasons that we believe that the proposed legislation will disadvantage locally based SMEs in favour of larger national businesses who will have a greater capacity to meet these onerous requirements, albeit at an increased cost to taxpayers. Whilst other jurisdictions, like Queensland, are considering a similar proposal for procurement, their threshold is for tenders over $100 million. The threshold of $200,000 for all ACT industries is far too low for the additional burden on business to comply.

We note that employers tendering on procurement proposals for some contracts worth at least $25,000 will also be required to submit a labour relations training and equity plan. Whilst it is acknowledged that templates are being produced by the ACT government to support businesses to manage these administrative processes, we are concerned that, despite these efforts, many employers will be deterred from tendering for such works.

These unnecessarily onerous requirements will result in reduced competition as SMEs opt out of tender processes, resulting in the economic benefit from this expenditure being less likely to remain in the ACT, resulting in job losses rather than job gains, contrary to the title of the legislation.

I finish by saying that to introduce further regulation and administrative requirements on local business appears counterproductive and unnecessary, and may only serve as a disincentive to our critical and economically important SMEs tendering on such works.

As I have said, Lucie Hood, who is our subject matter expert, will be in a better position than I to explore technical questions that the panel might have.

THE CHAIR: Thank you very much for your submission and your opening statement. Looking through pages 8 to 10, you have information about freedom of association, right of entry and the right to collectively bargain. I note the concern from your members about the freedom of association, the right not to belong to unions, entrenching unions in the procurement process and so on.

It seems from your submission that you are concerned that this is really injecting the unions into this process and giving them, to an extent, a power of veto or influence over procurement decisions, particularly for organisations that may chose not to unionise or have an EBA. That is compelling, either directly or indirectly, organisations that are seeking contracts with the ACT government to further unionise in one form or another or to sign EBAs. That is what is happening out of this. Is that a concern that has been raised by your members?

Ms Hendry: Yes, that is a concern. Your summary is representative of our members' concern. Lucie, would you like to add anything?

Ms Hood: Yes. We definitely have member feedback that questions—and it is our view as well—the need for third-party intervention. Our view is that ACT procurement should be adequately resourced to ensure that they have filled their own checks and balances to ensure that business are complying and meeting their industrial obligations and requisites.

THE CHAIR: Thank you.

MR PARTON: We have heard that a number of your members are upset about what may happen once these laws are implemented. I asked this question of the MBA: why didn't we hear from them? Why didn't they make submissions to this inquiry?

Ms Hood: We have had multiple members contact us who strongly oppose the legislation but are seriously concerned that, if they were to put a submission in, they would not be successful in obtaining government contracts, as well as having concerns over relationships with unions should they seem to be opposing the proposed legislation. We are aware of at least one or two of our members making submissions who have asked for their submissions not to be made public, for that very reason.

MR PARTON: When you say they are concerned about not getting government work, they are not concerned about the ACT government stopping them from getting work; they are worried about the union's ability to veto that process?

Ms Hood: They are concerned that speaking up and opposing the legislation would impact their relationship with the union, which would then impact the relationship with government in administering, providing or awarding the contract to that particular tenderer.

MR PARTON: Do you think that is a real fear?

Ms Hood: Yes, we do. We have had firsthand examples of that with the schools cleaning contract. We had 21 local cleaning contracts in the ACT procurement space. Following the review process and some serious conflict on worksites leading up to the end of that contract period, and a whole lot of productivity issues and conflict on sites, we saw businesses completely wiped out, with serious job losses and business owners being forced to shut their doors.

MR PARTON: I know that in this committee earlier there was a suggestion that, of course, people can make submissions and request that they remain confidential. My feedback is that there is not a great deal of confidence in that as a process. That is not to make a reflection on the committee or the parliament, but when there is so much at stake, it is a big chance to take, would you agree?

Ms Hendry: I might respond to that one.

Ms Hood: To lodge a submission?

MR PARTON: Yes. Of course, you can lodge a submission and indicate that you do not want it to go public, that it is only for the eyes of the committee. I note that one of

the committee members, I think, is a member of the CFMEU.

MR PETTERSSON: I—

MR PARTON: It is a fact of life, is it not, Mr Pettersson?

MR PETTERSSON: You are alleging that I would breach the standing orders of this place.

MR PARTON: No.

MR PETTERSSON: You are implying it.

MR PARTON: No. I am talking about the public—

MR PETTERSSON: You implied it just then.

MR PARTON: I am talking about the public perception of the transparency or otherwise of confidential submissions. That is all I am saying.

THE CHAIR: We will save the barney between committee members. Ms Hendry, you had something to add.

Ms Hendry: Yes. Lucie, sorry; we have no visual contact here, so I will just add to that. There are a couple of issues. One is whether businesses are concerned about being put at a disadvantage in winning government work if they are actively submitting contrary to legislation being introduced. In addition to that, we have a fairly complex piece of legislation which requires understanding of the Fair Work Act in detail, of the building code in detail and of this particular proposed legislation.

Whilst businesses do rely on bodies like the chamber to advise them that this is happening and these are the elements of it, quite often they are not in a position to provide really detailed expertise. They belong to the chamber expecting us to do that on their behalf.

So first there is a question of anonymity; then there is a question of being sufficiently informed. I am sure I do not need to remind the panel that when you have 97 per cent of businesses with 20 or fewer employees, they are busy cashing up the till and putting out the chairs and tables for people to have coffee. Sitting around writing submissions is not always the easiest for them.

MR PARTON: Perhaps it is reflective of their ability to undertake the entire process of the bill.

Ms Hendry: That is exactly right.

MR PETTERSSON: Your submission states that there is no substantive or formal evidence of extensive insecure work practices in the selected industries of construction, cleaning, traffic control and security industries. Do you still agree with that sentiment?

Ms Hood: We were looking at the findings out of the insecure work inquiry and the dissenting report which found no extensive evidence of insecure work arrangements or companies subcontracting out to avoid their workplace obligations. We stand by that. The majority of our members want to do the right things. We know members are wanting to meet their workplace obligations.

We do not want to see further legislation introduced which duplicates what is already in place, which we know is a complex piece of legislation, being the Fair Work Act. They also then have to comply with the Workplace Health and Safety Act. We do not need further prescriptive legislation which makes it more complex for business to tender on and apply for ACT government.

We want our local businesses to succeed, to grow and to thrive in this environment. Introducing further prescriptive legislation is not going to produce the desired procurement objectives outlined by the ACT government.

MR PETTERSSON: So if there were evidence in those industries that insecure work practices were occurring, would that be cause to do something?

Ms Hendry: Certainly it would be our position that the existing legislation needs to be complied with. If there were issues with any workplace not meeting their obligations, we would expect the compliance process to be such that it would call them to account for that. The chamber's position at no stage is that businesses should not meet their workplace relations obligations. But compliance, as Lucie said earlier, lies with the regulator, being the government, and there should be adequate resources to ensure that businesses comply with their obligations.

It is certainly our experience that businesses who join the chamber are seeking advice and support to have success in their business. Part of that success is meeting their regulatory obligations. So it is true that if people join the chamber it is very likely they will seek advice and remedy any problems they have.

No doubt there are businesses outside that particular realm that from time to time are not doing the right thing either in error or potentially neglect. That needs to be addressed. They need to comply. The question is: do we need another piece of legislation that is overly complex to achieve that compliance when we have already protections in place for employees and obligations to be met by employers that need to be complied with?

MR PETTERSSON: I agree with your assessment that it is a small number that are doing the wrong thing. Are they companies the ACT government should be doing business with?

Ms Hendry: We think the intent of the ACT government to procure from businesses who are doing the right thing is absolutely reasonable. If there are very few companies that we need to get to comply if you think they are not doing the right thing under existing legislation, why do we need another layer of legislation that requires the same compliance but just more of it?

THE CHAIR: From your submission and comments earlier and that of others, it seems that members are concerned that this is more about trying to entrench unions in that role rather than any other legislative outcome, given that you are talking about duplication?

Ms Hendry: Members want the opportunity to run their workplace in the way they think is most effective. This legislation is very prescriptive on having a delegate attend inductions and be able to call meetings at any time on any topic and have access to confidential and private information. They do not see that is constructive in terms of them making their best assessment of how to run and deliver on any particular government contract.

MS ORR: Ms Hendry, those points you have just highlighted, can you point to where in the legislation they are contained?

Ms Hendry: Lucie, would you like to comment on the detail with regard to the issues that have been raised in respect to a delegate having the right to call meetings at a time of their choosing on topics of their choosing and so on.

Ms Hood: I do not have the brief or the bill in front of me, but there is provision in the bill and/or regulations that industry experts and union bodies can arrange inductions and attend inductions or deliver inductions. They can arrange suitable times for meetings as well as education sessions to discuss workplace relations at a reasonable time.

There are provisions already in the Fair Work Act which provide certain requirements which are prescriptive in terms of time frames both for workplace health and safety and workplace meetings to discuss these types of issues. To introduce further regulation which creates uncertainty and potential conflict will not provide gains in terms of productivity and complying with their obligations. We think it will create more conflict and uncertainty for business and for unions and obviously impact on productivity at the work site.

MS ORR: I take your point. If you could provide those parts in the legislation. We have the legislation in front of us but not the code. My understanding is the code will be done as a regulatory instrument as an ongoing part of—

Ms Hood: Yes, it is in the job code.

MS ORR: So that instrument is not in this legislation. It is very hard for us to make that judgment because it is not before us.

THE CHAIR: That is the body of work that Lucie is being consulted on currently, is it?

MS ORR: Yes.

THE CHAIR: So that is what is intended as a consequence of this legislation?

MS ORR: So that has not been finalised yet.

THE CHAIR: But if it is being consulted on—

Ms Hood: It will be legislative. It will be under this bill, so I think it is relevant and necessary to make note in this inquiry that it be discussed and be put forward and transparent so that people understand the implications and potential issues.

MR PARTON: When you talk about potential issues, we are talking about a firm being obligated to facilitate unlimited meetings with employees and union delegates to discuss pretty much whatever the union needs to be discussed, including provision of union membership application forms and information about the union. Under those laws, a union would have unprecedented power, if they chose, to grind any workplace to a halt.

MR PETTERSSON: By handing out membership forms?

MR PARTON: We are talking about unlimited meetings without a prescribed time. You could have 15 meetings a day if you so chose. So—

MR PETTERSSON: I do not believe—

MR PARTON: is that a concern from your membership?

Ms Hendry: Lack of definition and limits on those things is a concern from the membership.

Ms Hood: In our submission we urge the government to proceed with caution in terms of attempting to be prescriptive in certain areas but then not outlining the extent of those requirements. That very example, essentially from a productivity perspective, if the union so sought they could go to site at any time and arrange a meeting that went for five hours to discuss an issue or a workplace concern they had.

We believe ACT procurement should be adequately resourced to fulfil those checks and balances without the need for third-party involvement. We also have concerns around freedom of association breaches. Nowhere in the legislation does it talk about the right of an employee to not associate. We see it as a breach of freedom of association. The jobs code talks around having the opportunity to be party to or join a legal union. We are supportive of that. If employees want to join a union, we have no issues with that. That is a lawful requirement under the legislation. What is not contained in that legislation is the ability for an employee to opt out or not participate if they so choose. They should not be compelled or forced to do so.

MR PETTERSSON: How is that going to occur under this proposed bill? I am confused how it could happen.

Ms Hood: You are requesting employers—

MR PETTERSSON: Compelling someone to join a union under this bill, I do not get the connection.

Ms Hood: to provide training at the point of induction. You are requesting the employer to then arrange union payroll deduction fees. It appears what was intended around enterprise agreements to collectively bargain has been removed. It appears there is a requirement, or at least it could be viewed that the legislation is written in a way, that businesses must have a union enterprise agreement should that be the request of the union for any site. To say that that is not in breach of freedom of association or that that is not a concern for business, I think it is pretty evident that it is.

MR PETTERSSON: I fundamentally disagree. I bring you back to my original question: you claim individuals would be compelled to join the union. I hope you can clarify that remark. How would someone be compelled to join the union? Under this piece of legislation, how would someone be compelled to join the union?

Ms Hood: If you are providing an employee with union payroll deduction forms, union information and everyone or it appears that everyone is a union member, as an employee you may feel compelled to join a union on that basis. It may appear they are being forced or pushed one way to join a union. There is legislation that says there is no requirement to join a union. It is implied throughout that ACT jobs local code that you are able to push to join a union. I will leave it at that.

THE CHAIR: That is in the draft code that is up on the ACT procurement website and is available to review.

Ms Hendry: I guess it goes to the way things are done around here. When you are a new employee attending induction, you are looking for signals of how things are done around here. "How can I fit in? How do I become a successful employee?" If you are getting a whole lot of cues at that point, they are very influential. If you think, "Well, that's what I need to do to fit in here," it really dilutes the decision-making for that employee.

THE CHAIR: So the big burly fellow from the union is there with the union enrolment forms suggesting they join the CFMEU or another union.

MR PETTERSSON: Big burly guys like me?

MS ORR: Ms Hendry, look, I note the concerns you have raised and that have been outlined. I continue to have concerns, though, that the code itself is not a finalised document. We have heard evidence today that it is open for public consultation, so it is currently being consulted on.

It has not been submitted to the Assembly; it has not been tabled in the Assembly. I note your suggestions, but I feel it is a difficult situation to put anything back to you because it is not something I have necessarily scrutinised.

THE CHAIR: I think it is reasonable given that it is a document that has been put on an ACT government website. That is the government's intention at this stage, and any feedback on that draft code is useful for this committee, positive or negative.

MS ORR: Yes, I note the feedback. I am wanting to convey that the code is not

finalised yet. We can note the feedback, but without being able to see the final document there are limitations.

MR PARTON: There is always the chance that the government might back away from it.

THE CHAIR: Who knows?

MR PARTON: My question is this: Alex White from UnionsACT suggested that these changes will not increase the cost of procurement, the cost of infrastructure projects. Is he correct?

Ms Hendry: Our position is that businesses find it difficult to manage the regulatory burden they already have. If you put in another layer of regulatory burden it is even harder. It is a logical premise. That means that if they think that it is too hard, then they will shy away from tendering for government work.

It is true that larger organisations can resource themselves in a way to meet some of the legal and regulatory requirements that smaller business does not have the capacity to do. It does not mean that the smaller business should not meet their workplace obligations and it does not mean that they do not make an effort to do that. But the more layers of regulation and the more complex we make things, the less, in fact, those businesses will participate. That is our premise. That then biases large business and often national business. There is nothing wrong with those businesses. But our interest is in keeping the money that results from ACT procurement, that investment, in creating more jobs and growing our economy.

MR PARTON: In terms of increasing cost of procurement and cost of infrastructure, are you more concerned by the loss of competition, bidding on those projects, because of the narrowing of the number of firms that would be available as opposed to the cost of the compliance, or both?

Ms Hendry: Both, because they are in tandem, if you like. The harder we make things, the less small business will feel that they can tender on things. It is all too hard; they will not do it. The more big business has to resource compliance, the higher the cost.

MS ORR: Just a supplementary to that, we do have a submission from a small business that has indicated that they are supportive of the legislation because it will even out the playing field and make it easier for them to compete. Do you have a view on that point?

Ms Hendry: We hold the position broadly, regardless of whether we are talking about this piece of legislation or any other work that people are tendering on, that we want employers to meet their obligations, that is, apart from being the right thing to do for their employees, which it is, in addition to that, that is the only fair way to compete.

We fully concur with that principle that if people are doing the wrong thing, paying less in wages or not doing it in the right way et cetera, that makes it unfair competition, because obviously they have a different pricing base to other people. We

agree with that. What we do not agree with is: we need this legislation to ensure that people are meeting their workplace obligations.

Ms Hood: I think participation by competitive business in the ACT is essential for achieving our economic efficiency for the ACT government. But we do not think that the answer lies in creating more legislation that creates more barriers and complexity for small business owners. We have raised it in our submission. We have got some questions throughout our submission that we would like the inquiry to consider, particularly around: has any modelling been done as to the impact? We are quite a unique make-up in Canberra, being 97 per cent small business. And given that we are wanting our local businesses to be able to tender on these types of ACT government works, we would hate to see legislation introduced that deters these businesses and then has the flow-on effect of impacting the economy and the community.

THE CHAIR: I would like to thank Ms Hendry for appearing today and providing your submission and your opening statement. Lucie, thank you very much for being on the end of the phone. The committee secretary will be in touch if there are any other matters, and you will receive a draft copy of *Hansard* to review to make sure that you are happy with it. I would like to thank you for attending today.

Ms Hood: Thank you for inviting us to appear, and if the secretary would like the opening statement in soft copy we would be very happy to forward that.

THE CHAIR: We will reconvene at 3 pm with United Voice.

Hearing suspended from 2.03 to 3 pm.

RYAN, MS LYNDAL, ACT Branch Secretary, United Voice
HADDON, MS SHONA-LEE, Security Officer, United Voice
MANEESIRAWONG, MR JIRAYU, School Cleaner, United Voice

THE CHAIR: Good afternoon and thanks very much for coming today to appear before the committee. I draw your attention to the privilege statement that is before you and ask you to confirm that you have read and understand the implications of what it says. Do you have an opening statement?

Ms Ryan: Yes, a very brief one. Thank you for hearing us today. I assume that the committee has already acknowledged that we are meeting on the land of the Ngunnawal people. I wish to pay my respects to their elders past, present and emerging. United Voice covers those industries that are going to be initially covered by the proposed legislation. With me today are Shona Haddon and Jim Maneesirawong, who is a cleaner working in government schools. We support the bill and have put in our submissions that set out the reasons why.

People who have heard me in the past advocate on behalf of cleaners and security officers know, I think, of some of the difficulties those industries experience and workers in those industries experience. It is pretty much undeniable that there is widespread exploitation across those industry areas. It has often been identified not just by our union but by the Fair Work Ombudsman and others. These have been very difficult industries to police. This causes all sorts of problems, not just for the workers in those sectors but also for the employers who seek to do the right thing. We have put in submissions in the lead-up to the drafting of the bill, and also some of the issues touch on an earlier submission we made to the insecure work inquiry. They have identified a number of areas where we are really keen to see some improvements in the way that contracts are contracted and managed.

We support the certification prior to tendering, because one of the flaws in the tendering system has been that companies with very bad records, in fact some directors of companies that have liquidated in the past, have been able to put proposals forward that can be based on past unlawful conduct, which almost infects the market and the proper assessment of tenders. I think that is a really important measure in the bill. We also think it is important that employers who are seeking to do work with government are fully across their obligations as employers and are prepared to provide training and generally do the right thing by their workforce.

We are really delighted to see a compliance unit, because one of the areas that has been problematic is that even though all governments at all levels, whether under Labor or Liberal, have had requirements for contracts to be lawful—which would make sense—and to be conducted in a lawful way, the difficulty has been that when we ourselves or individual workers or indeed other companies have identified unlawful conduct there has not been a mechanism to ensure compliance. That is why the compliance unit is pretty important, and that is also something contemplated by the bill and the code.

I do not want to take up too much of the time in talking to you about things you can easily read and that have been canvassed in our submissions. I do want you to be able

to put some questions to me, and I am most keen that you hear from our members. Unlike me and, I think, everyone else here—we are lucky enough to be paid to be here—our members have to volunteer their time to be here, and I am very keen for you to hear from them.

Ms Haddon: I thank the committee for hearing from us today. I am a union delegate for United Voice. It came about because I had struggles with employers and they gave me a lot of information that I required which I did not know. There was lots I did not know about fairness in the workplace and bullying, and if it were not for United Voice I probably would not be here today as a security guard.

I have worked as a security guard now for six years. When I started working in Canberra I found that there were things that seemed unfair. We had lots of casual staff with permanent openings that were not being offered. Hours of permanent staff were changing on a weekly basis. Most of all there was bullying by management. I was also told that security guards outside their permanent jobs were being offered to do cash-in-hand jobs.

I stand here today to ask that you consider these laws, because employers need these laws to provide them with a range of information on recognising workers' rights, being able to do inductions for new employees, and providing support when they need it. When they do need it, which is quite often, they are unable to find resources unless they come to us to help them.

Mr Maneesirawong: I am here today to speak on behalf of the rest of the cleaners. I would like to thank you for this opportunity and say how honoured and grateful I am to be able to be part of the cleaning organisation and well supported by the union.

Firstly I would like to start off by telling more about my cleaning journey. I started off in this industry in 2015. The journey was very tough and challenging, as I did not have any knowledge relating to the rights that I should have as an employee. Additionally, due to the fear of losing the job, as well as having poor English skills, I was forced to do everything that I was asked and did not seek any help, as I did not know who from or how to seek help.

Let me give you an example from when I started in 2015 with my previous company, Phillips Cleaning. I started in Lyneham High School. I started the job because my friend introduced me to my boss there and he just accepted me. Then he just pointed to one lady who worked there already and said, "You just listen to what she says. You just follow her." On my first day she gave me an area to do my job in four hours. I was slow in the beginning but I tried harder and harder every day, then I got used to my area and I finished early. Sometimes I could finish in two, 2½ or three hours. But after I finished she came to me and said, "Jimmy, you have to do another area." And I had to do that.

I tried to work hard, as I wanted to be good in front of my boss. I had many problems with two—I did not have gloves or something like that. When I asked my boss what I should do, he told me, "Just grab it with your hand," because he wanted to save the liner. He did not want us to replace the liner every day, so sometimes he asked me to grab garbage by my hand and just empty it. Sometimes when I worked hard and I got

sick and I asked him for sick leave, he said, "Okay, if you ask for sick leave you need to find someone to work instead of you and you don't get paid, because you pay for the one who replaces you."

So I had many problems that I felt were not the proper standard for work here in Australia, but I could not ask for any help. Even when I asked my friend who worked there before me, they just said, "We have poor English. Don't make trouble. Don't make a problem with your boss, otherwise you will lose your job and it will be very tough and hard to get a new job." So everyone just followed that and lived in that condition, a very bad condition. When we asked for sick leave or annual leave it was a very big problem for us. We just worked in that condition, which was dreadful, until the day we met the union. When we joined the union we found that our work standards and conditions got better. Now we feel more secure since we joined United Voice. The union has helped me to learn—

THE CHAIR: Jimmy, we want to allow time for the members of the committee to ask questions. Do you have much more to say in your opening statement?

Mr Maneesirawong: No, that is all I want to tell you: about the conditions we have faced and that they are now getting better because we have joined the union and the new companies treat us well.

THE CHAIR: Thanks for your opening statements. Previous witnesses—a couple of them this morning—talked about this legislation and said that in their view what the legislation does is to give power of veto over who does or does not get contracts with the ACT government. As a result of that, it gives, in a sense, coercive powers to the unions to force those companies to sign off on EBAs, because otherwise they are not going to get contracts with the ACT government. A previous witness this morning cited the cleaning industry as an example where there have been issues with the union, which I assume is United Voice. They talked about the fact that there was—I use the word "harassment" but that is my word, not theirs—a series of actions by the union. The cleaning companies went from 21 local cleaning companies in the ACT down to four companies, of which only one is local. Do you have a response to that?

Ms Ryan: Yes, I am happy to talk to that.

THE CHAIR: Also, with the remaining companies, do you have an EBA with those companies?

Ms Ryan: Jimmy's discussion about Phillips Cleaning was about one of the local companies that was not doing the right thing. There were a lot of companies in the school cleaning space until last year. We found over a period of time that those local companies were clearly not doing the right thing. Phillips Cleaning company was prosecuted in the Federal Court. The decision is available. It is well worth while for the committee to read it, because the terrible things that are referred to in that decision happened in the school system with a local company.

It is not that all local companies are bad, but we should not put a halo over all local companies either. What we have discovered subsequently is that some of the behaviour reported in those court documents for Phillips Cleaning was much more

widespread. I would easily suggest that 60 to 70 per cent of the cleaning companies that were in the schools at that time, those 23 companies, were conducting themselves in an unlawful manner.

When the government reviewed the cleaning contract system, what they were looking for, as I understand it—obviously, the Education Directorate can speak more directly to this—they wanted something that was more manageable from their perspective. They saw that there were some efficiencies, from government's perspective, with managing four contractors rather than 23.

As to whether those companies ultimately were local companies or national companies, that was really something that was decided in the tender process. The tender process is run separately from United Voice. As to the four—

THE CHAIR: The MOU does give you input.

Ms Ryan: It does give us input, and that did provide some opportunity to say, from memory, where there were companies who had liquidated, for example, and then phoenixed; to be able to identify those things. The government can identify those things themselves, because some of this information is publicly available, but you have to know where to look.

THE CHAIR: Of those four companies that remain, do you have an EBA with those companies?

Ms Ryan: With three of the four, yes.

THE CHAIR: Of the 23 companies previously, how many did you have an EBA with?

Ms Ryan: Most of them.

THE CHAIR: Most of them?

Ms Ryan: Most of them. When you read the Phillips Federal Court decision, you will see that they were prosecuted for failures to abide by the collective agreement that was negotiated between the union and the company. They had about 25 per cent of market share. The next largest company—or it might be equal in size—was Rose Cleaning Service, and their conduct was almost identical. Rose Cleaning Service, if you wish to check, has also been prosecuted by ACT revenue for failure to meet their taxation obligations. So there were a range of companies. There were some very small companies, mum and dad companies, that seriously were mum and dad companies, that we did not have an enterprise agreement with.

There was one that we did have one with. I can remember the name of the owner, Stevanovic, but I cannot remember the name of the company offhand. We also had an enterprise agreement with them. Mickey only ever employed his mum, but it was a nice thing, and they were there. Mickey's mum, I can report, has retired, but Mickey remains a school cleaner with one of the larger companies that took over the work.

We do not say that every local company is bad; we do not say every local company is good. We think that there needs to be a tender process that looks at the records of the companies. I think the proposal regarding the IRE certificate does that, and it is a way of actually eliminating some of the bad eggs from the system.

MR PETTERSSON: Other submissions have questioned the inclusion of cleaning and security in this bill. Why should security and cleaning be included in this bill and maybe not other industries?

Ms Ryan: I think that there is an argument to include further industries. But why them? The government is a significant purchaser particularly of cleaning and security services. If the union could have its ultimate wish, these people would all be directly employed just like the security guards that let us into the building today. Our actual gold star standard if we were to have everything we wanted would be direct employment. I know the committee is not looking at that today, but just in terms of our wish list—

MR PETTERSSON: Put it out there.

Ms Ryan: I may as well put it out there. But in the absence of that, I think the community wants to see—

THE CHAIR: You want all those businesses to close, essentially.

Ms Ryan: ethical businesses in that space. You would purchase a lot of cleaning, whereas some other industries—for example, catering, which is something else that we cover—are incidental to what you spend on cleaning when you look at schools and hospitals as well as some of your office spaces.

In respect of security as well, I think that we have had significant problems around events in Canberra. Summernats has been a problem area around dodgy contractors. Even at the show, we had people working 12-hour shifts without water or means of going to the loo. We have had some really significant problems in that area. Whilst you do not spend as much money on it, the problems are pretty bad when they turn up.

MR WALL: Ms Ryan, you made the statement before that in respect of the previous contracts for cleaners of schools in the ACT, about 60 per cent were in your view not compliant. How many of those companies did you initiate proceedings against?

Ms Ryan: Phillips and Rose.

MR WALL: Why not the rest?

Ms Ryan: Part of it was not knowing, actually. Access was a problem with some of those companies and we just did not know.

MR WALL: You are claiming that they were breaking the law but you had no evidence of it.

Ms Ryan: This is how we found out later. Through the contracting system, everyone

who was working under the 23 companies beforehand, all those workers, had to be offered employment with the incoming contractors, which I think is not always widely understood. Sometimes when the union are saying, "This is a bad company and you should move them along," people assume that those workers would lose their jobs. I understand that that would not make much sense. But we have had in our contracts for many years now a requirement on the incoming contractor to offer employment to the existing workforce. That included directors of companies, as I was talking about in Mickey's case.

What we discovered subsequently when I talked to those workers was that some of the practices about standing people down over the school holiday periods, getting them to work without proper equipment, getting them to work without gloves, was actually more widespread than I realised.

MR WALL: You have cited two cleaning companies that you initiated proceedings against. Obviously, you have referred us to read the Federal Court judgement on one of them. Would you say that that process worked well? Was it a just process?

Ms Ryan: No, it was a terrible process, Can I tell you?

MR WALL: Why?

Ms Ryan: Because of the cost of the Federal Court proceedings. Jimmy was one of the witnesses. There is the terrible cost for those workers to have to turn up and give evidence when their first language is not English. There was the cost to the union for hiring the interpreter, because Korean is not widely spoken. We had to get someone up from Melbourne to interpret. There was a great cost associated with those proceedings.

Then, of course, at the end of the proceedings, which has also been publicly reported, the contractor, having had an order made against them, signed off his property to his wife and promptly liquidated. Having gone through that entire journey, the money was never recovered.

MR WALL: How will the legislation that is in front of us change that?

Ms Ryan: I think the important thing is that there is a compliance unit and a registrar. I think they are the terms in the legislation.

MR WALL: But ultimately if there is a breach it is still going to require—

Ms Ryan: Do you know what would have been fantastic in hindsight? I am sorry; I did not mean to cut you off. What would have been amazing in hindsight would have been when the union brought our problems forward, if there had been a unit that could have investigated that without the need for us to go to the Federal Court, that it could have taken prompt action, made an assessment and engaged with the contractor or even facilitated some engagement between the contractor and the workers to get an outcome. That would have been far preferable than going to court.

MR WALL: My understanding of the case with Phillips cleaning was that numerous

calls by you particularly and the union were made to various ministers and areas of government calling for an audit of Phillips, that numerous audits were conducted and they passed.

Ms Ryan: So the audits done for—

MR WALL: So how is this going to change that process?

Ms Ryan: The failure of the audit in that circumstance is that none of this was underpinned by legislation. It was all underpinned by contractual law and there was no compliance unit. People were trying to do different things and different audits and there were some failures in the audits, we would say. I am conscious of the time but I am very happy either to meet with you separately or to bring forward all the documentation if the committee wants that.

But what is different about this time is that it is legislated; there is a compliance unit; there is a registrar. I reckon that those things would have negated any need for the union members to take the action that we did. In fact, had we been able to resolve it early, perhaps that company would not have been liquidated.

MR WALL: The new legislation, should it pass, will give additional powers to unions to be part of workplace inductions and the like, ultimately reducing the autonomy business owners have over how they operate their businesses. If a worker is injured or a court rules that a worker was not properly inducted, will the union share any responsibility in failing to induct a worker properly or will the business owner be wholly responsible, even though you are a partner in that process?

Ms Ryan: I am not expert in the law in this matter. I am very happy to get some legal advice on it. But my understanding is that the liability would rest with the employer. To the best of my knowledge, I have an obligation to provide accurate information about their awards, the national employment standards, expectations around work. I do that faithfully and to the best of my ability and have done for decades now. I think we will continue to conduct ourselves in that way. That is what you can do—use your best endeavours. If an employer fails to induct properly, I think they have still got the same obligations, whether this legislation existed or not.

MR WALL: Even though you are now part of it—

THE CHAIR: We will just move on now, thanks, Mr Wall.

MS ORR: I have a supplementary on the Phillips cleaning contract. How long was the legal action that you took against Phillips? How long was the duration?

Ms Ryan: We raised the issues in 2015. The court decision was handed down in 2017.

MS ORR: I wanted to clarify that.

THE CHAIR: Have you got a substantive question?

MS ORR: I do. Some of the submitters to the inquiry have indicated that education

and awareness raising would be a better approach than the proposed compliance regime. Do you have a view on that?

Ms Ryan: I think there is a role for education. Yes, there is a role for education but we find that some employers flout legislation that is very clear and well known to them. The Fair Work Ombudsman has commented on this many times. Their approach has been to run education rather than compliance. One of the significant areas where they have spent a lot of money trying to educate people is in restaurants. They do the education bit and then they catch them every time.

The problems are systemic. People willingly flout the law. Unfortunately, for some it has been a business practice. I think we refer in some of our submissions to the issues around franchising where it has become a business model. Yes, there is a role for education but you would need a stick.

MS ORR: You have given some examples of where you have seen in government contract breaches of those requirements. When you have gone through the court case that has been proven, has a contract ever actually been terminated due to not meeting the requirements of that contract?

Ms Ryan: I do remember that there have been instances of that. I will have to go back a few years, but there have been instances for safety breaches—again in school cleaning—where it did result in termination. It is a very rare thing; it is not something that we would want to see on a daily basis. In fact, we want to resolve things, because that is what we want to do. We do not like to have the conflict if we can resolve it. Our members want to work for good employers. To the extent that this legislation leads to good employers—hopefully local employers, but good employers—that is a great thing for working people. It is good to work for a nice boss. It is a good thing.

MS ORR: So you would see this legislation, where there are areas of concern, helping to reconcile some of those issues before—

Ms Ryan: Quickly! We have got a process. It is well understood by everyone. Open, transparent, legislated, understood by employers, understood by workers. I think that is really good and that is going to be a good thing for the employers who want to do the right thing as well. I am sure you have heard complaints. You must have heard complaints—we hear them all the time—from employers who say, "We do the right thing, but we cannot compete with those who do not." I think that is a really incredibly important thing that this government could deliver for everybody.

THE CHAIR: You have raised issues about compliance. Do you think that the issue at the moment in your view is with the existing legislation or the fact that it is not being complied with? Is the fact more that actually what we need to do is comply with what we have got rather than duplicate a whole raft of new legislation, essentially, which just ties together and says "Do what you are meant to do already under existing laws"?

Ms Ryan: I think there are a couple of things in that. Yes, we have some federal laws that I think are weak in a number of areas. The ACT government cannot do anything about that. But what the ACT government can do is give comfort to taxpayers that

their money is being used appropriately with companies that are complying with existing laws.

You have that at the pre-tender process with the certification; you can have confidence in that; the public can have confidence in that. Whilst under contract, if something does come up, if there is a breach, despite everybody's best endeavours to remove that out of the system, we have a mechanism for dealing with it which does not involve litigation. I think it is complementary to the federal laws but it gives added confidence to the ACT government that your money is going to ethical suppliers, really.

THE CHAIR: Unfortunately, I think we have run out of time. I thank all three of you for attending today.

Ms Ryan: Thank you.

THE CHAIR: I note the irony of the union member with the Menzies shirt on. The committee secretary will follow up if there are any other issues. You will get a copy of the draft *Hansard* to make sure that that is all good. Thanks very much for appearing and for your submissions as well.

Ms Ryan: Thank you very much for your time. Please, if you do want some further details or anything, I am very happy to supply.

Short suspension.

O'MARA, MR JASON, Secretary, CFMEU ACT Branch
SMITH, MR ZACHARY, Divisional Branch Assistant Secretary, CFMEU ACT Branch

THE CHAIR: Welcome, Mr Smith and Mr O'Mara, to the committee inquiry into the Government Procurement (Secure Local Jobs) Amendment Bill. I would like to thank you for your submission as well. Before we start I want to confirm that you are aware of the pink privilege statement before you. That tells you the privilege requirements. If you could have a look at that and indicate that you are happy you have seen it and are aware of it.

Mr O'Mara: Yes.

THE CHAIR: I would invite you to make an opening statement.

Mr O'Mara: We are here today to have a talk about the code for the Government Procurement (Secure Local Jobs) Bill. Obviously we speak in favour of it. We think it is a good code which is good for workers, good for business and good for the Canberra community. The code ensures that people who are doing work for the government work to the highest ethical and lawful standards. It does not change any of the requirements under law but it does have consequences if people are caught doing government work when they do not comply with the current laws.

People who decide that they do not want to pay super or long service will be affected but people who currently do the right thing by their workers, and pay lawful entitlements, will certainly not be adversely affected by anything in the code.

THE CHAIR: Have you got any statement as well, Mr Smith?

Mr Smith: Like Jason said, our union supports the secure local jobs code and associated legislation. Our support for this legislation, or this initiative, is grounded in the firm belief that the ACT government should use taxpayer money to ensure that people that we contract with, or the companies that we contract with, have the highest ethical and labour standards in their approach to business. I think Jason has probably covered the other points fairly well.

THE CHAIR: It was put to the committee by witnesses earlier today that the effect of this legislation, and certainly the MOU that is currently in place, is that unions, in this case the CFMEU, essentially can use a power of veto, their influence over the process, to coerce and influence businesses into signing an MBA. Essentially if they do not then what happens is that they are just not going to get the contract with the government. I would be interested in your views on that and your dealings with businesses.

Certainly it was also put that it led to perceptions of bullying and certainly a number of businesses not wanting to come forward and put their name forward because of the consequences and the interaction with the CFMEU and how they would be dealt with.

Mr O'Mara: I would like to see where in the code or the MOU it gives the unions a

right to veto anything. It does give the unions opportunity to make submission into companies doing the wrong thing. But we could do that without it. People still have the same lawful entitlements.

The difference is that what the government have put forward is a code which says if you want to do business on ACT taxpayers' money you have to have the highest ethical moral standards, you pay your people appropriately and you treat them right.

THE CHAIR: I think what they were referring to was section 4.3 of the MOU whereby, when it comes to contracts, albeit industrial or other matters, the relevant union, as nominated by UnionsACT, presents their view of the list of people that have attended and which ones essentially they favour and which ones they do not. Of course that then has a significant influence, one would imagine, on who gets the contract or not. In answer to your question, that was the evidence put forward.

Mr Smith: I just make a point in response to that. Unions are invited to make submissions in response to tenders. Those submissions have to be grounded in fact in that there are observations or evidence of poor industrial relations practices, contraventions of relevant laws or occupational health and safety issues.

To say that there is a veto is not correct. This legislation and the code certainly do not give the union movement or any individual union a prerogative or an overriding right to say which contractors do and do not win government jobs.

You talk about contractors that have raised issues. I say that in the past couple of weeks I have been talking to companies in the construction industry, which I do every single day as part of my job, we have had a lot of support from companies that we have spoken to saying this is a good initiative. They see themselves as employers who do the right thing. And they see it as a good initiative, anything that incentivises or rewards good contractors in winning taxpayer-funded jobs. For the sake of balance, it is worth noting that there are plenty of companies that support this initiative.

MR PETTERSSON: Other submissions have questioned the inclusion of the construction industry in this bill. Why should the construction industry be included?

Mr O'Mara: The construction industry is an industry which is rife with wage theft, with sham contracting, with phoenix contracting. There are numerous issues around underpayment of wages and conditions. They have people who close up companies and start up tomorrow owing hundreds of thousands, sometimes millions, of dollars to workers. To not include the construction industry in such a code, given the number of issues that our industry has with poor behaviour from business, would be ludicrous.

MR PETTERSSON: These breaches of the Fair Work Act that you have mentioned, are they occurring on ACT government jobs?

Mr Smith: Yes. Obviously there has been the highly publicised incident where we have taken a number of contractors on the Canberra Metro light rail project to court recently.

THE CHAIR: I saw that flyer, yes.

Mr Smith: That is obviously highly publicised. There is also the day-to-day work of the union where we have got a number of ongoing prosecutions in the Federal Circuit Court relating to wage theft. Some of that work was performed on ACT government jobs. We have got wage complaint investigations that are ongoing. Some of those relate to work performed on ACT government projects.

MR PARTON: We heard some suggestions in this hearing today from the MBA and the Business Chamber that some firms—and I know Mr Hanson alluded to this—have indicated that they are too frightened to speak in a public place, like at this hearing, against this bill because they fear that your union will come to get them, that they will be bullied as a consequence of that. How would you respond to them?

Mr O'Mara: I would say that if you call "bullying" a union ensuring that their members and workers in the industry are paid their lawful entitlements—call that what you want—I would call that sticking up for people who are being ripped off.

MR PARTON: There was a suggestion from one of the people giving evidence today that union representatives have turned up at the site weekly, or even at smaller intervals, to basically tell them, "If this does not happen you will not get work." And the concern is that people believe that, as a consequence of some action—I am not going to name the firms—some people who gave evidence at the royal commission, for argument's sake, into trade union corruption have since been the subject of some fairly orchestrated campaigns by your union, and people are worried that if they step out of line they are the folk who will—

Mr O'Mara: If people who are doing the wrong thing industrial safety-wise or quality-wise have been held to account for that, I do not think that is bullying. We visit sites intending to represent our members. If we could be there every day on sites representing members on every site in Canberra, we would. Unfortunately we do not have the resources to do that. We do our best with the resources we have got, but we are a member-based organisation who represents workers and they need to see us to represent them.

MR PARTON: So there is no bullying?

Mr O'Mara: No.

MR PARTON: John Setka in 2017 said, at a well-publicised rally, referring to ABCC inspectors, "We will lobby their neighbourhoods. We will tell them who lives in that house and what he does for a living. We will go to their local footy club, we will go to their local shopping centre. They will not be able to show their faces anywhere. Their kids will be ashamed of who their parents are." Do you endorse the comments of Mr Setka, and is that bullying?

Mr O'Mara: What I would say is that the ABCC are a political organisation set up by the federal Liberal government to attack unions.

MR PARTON: So you do endorse it?

Mr O'Mara: We do not support the ABCC and we do not support their actions, no.

MR PARTON: So you endorse the comments of John Setka?

Mr O'Mara: I have just given you my answer.

MS ORR: In the cases where you have represented workers in instances of breaches, what are the obstacles you have experienced in prosecuting those cases?

Mr Smith: One of the major ones is that it is a very lengthy, drawn-out process from the moment that an instance of wage theft is identified to the resolution of that matter. If you have to go through the courts system relying solely on the legal avenues, whilst ultimately it might get you to that outcome, it would not be uncommon or unheard of for that process to take in excess of two years. So that is a major obstacle for us.

The union movement is also on record as saying that the current legal framework under the Fair Work Act does not support wage and time book inspections and does not support union right of entry thoroughly enough to allow for proper audit and investigation at the time a complaint is raised.

MS ORR: In taking the legislative avenue, is there a way that this bill would help—compliance has been a big part of the conversation—in reconciling those issues in a better way?

Mr O'Mara: Due to the regulatory framework and having to be code compliant across projects, whether they be government or non-government, and the auditing that will be undertaken, the bill should ensure that people know what they have to comply with when they come into the system and that they cannot be given work if they do not comply with the system. Our feeling is that people are more likely to comply with their obligations so that they can continue to do ACT government work.

MS ORR: How important then is the compliance that would be brought about by this bill in the situations we have discussed today?

Mr Smith: Very important. The ability of a client to cut through the legal processes and audit a contractor to which they are engaged is timelier. There are probably greater powers available under a contractual arrangement that the government would have. As Jason mentioned, there is a large commercial imperative which cannot be underestimated for a contractor to rectify any issues in a quick and timely manner. It is more than just an issue of reputational loss; it is more than just an issue of what the legal consequence might be at the end of the process.

Now you have this commercial incentive and obligation not just about your current job but future ongoing work for the ACT government. That obviously hits any contractor in the hip pocket and gives them larger motivation if there are any issues to fix them in a quick and timely manner.

MS ORR: You have quite a few comments in your submission on the auditors. Can you clarify how you see the approved auditors functioning and the importance of that role?

Mr Smith: We made comments about the approved auditors process. We wanted to break the commercial nexus between an auditor and the person they are auditing. We have concern with the IRE system that currently a contractor selects their auditor. It is a fee for service and there is a commercial relationship between the auditor and the contractor.

We have supported the IRE system since its inception but we think it could be strengthened. Strengthening the auditing provisions is one really important way of doing it. Whilst it is not everything the union was seeking, this legislation and the code are an important step forward in that area.

MR WALL: Gentlemen, are the ACT branch of the CFMEU or any of its members currently before the courts or facing charges for breaking any law?

Mr O'Mara: What significance does that have for this inquiry into secure local jobs?

MR WALL: In your opening statement, Mr O'Mara, you said organisations or businesses who comply with the current laws will have no problem.

Mr O'Mara: Yes.

MR WALL: Are your organisation and its members law-abiding citizens?

Mr O'Mara: Yes, I believe so.

MR WALL: Are any of your members or the organisation currently facing charges before the court?

MR PETTERSSON: A point of order, chair. I do not see what this has to do with the procurement bill.

THE CHAIR: Do you want to respond to the point of order?

MR WALL: The evidence from not just the current witnesses but numerous witnesses in support of this legislation has continually cited an element of lawlessness on the part of employers and that they should be excluded from doing work for the government. I am trying to determine whether the organisations lobbying for this legislation are in fact lawless themselves.

MR PETTERSSON: We are here to talk about procurement decisions; not to make personal attacks.

THE CHAIR: I am happy for this line of questioning to proceed, but I note a line of caution in terms of any matters that may be before the courts. We just need to be cautious of sub judice. But there is no doubt that this piece of legislation is about workplace laws and their compliance and making sure that organisations comply with workplace laws. That is the whole effect of this bill.

If people involved in this process, be it unions or businesses, have interactions with

workplace laws and their ability to comply and, given that the issue of complying with workplace laws was raised by Mr O'Mara, I think it is a relevant line of questioning. But I caution you, Mr Wall and Mr O'Mara, not to discuss matters that may be before the court. If there are matters before the court, you can say yes, but we do not need to go into any details.

Mr Smith: There are matters where the union and officials of the union and the branch are respondents. I am sure Mr Wall knew that before asking the question, though. As you said, chair, I do not think it is appropriate to go into any of those details for the reasons of sub judice, but those are all matters before the court. Not an official of this branch or the branch itself has been found guilty of any criminal offences, and I remind everyone that there is a presumption of innocence. So there are matters before the courts which the branch and some of its officials are respondents to, but that is—

THE CHAIR: In relation, though, to workplace laws, and not criminal offences, are there any breaches of workplaces laws that have occurred at the CFMEU?

Mr Smith: A number of matters are before the court. One matter is on appeal from the regulator after the union was acquitted, for lack of a better term, on all counts regarding that workplace law. Another matter is still before the federal circuit court and the judge in that matter has reserved their decision.

THE CHAIR: So there are no fines or anything like that for breaches of workplace law that—

Mr Smith: Not in the ACT, no.

THE CHAIR: Over what period? You have never been fined, or the CFMEU has never been fined?

Mr Smith: I have been an official of the ACT branch for six years and it has not happened in my period as an official of this branch.

MR WALL: The CFMEU and the ACT division is part of a national movement that has, in this financial year alone—bear in mind this figure is a few days old, so it has probably gone up now—paid already in excess of $1 million in fines for breaches of the Fair Work Act and has been labelled the worst recidivist corporate offender in the country. Why should the ACT branch be given any credence in its calls for changes to legislation in this space when it seems it is a worse offender than businesses or organisations that do work for the government?

Mr O'Mara: Mr Wall, talking of recidivist offenders, every opportunity you get you try and bash the union, and particularly the CFMEU. We are here to discuss the validity of a procurement code which is intended to help secure local jobs and to help local businesses win work in Canberra and workers to be paid right.

MR WALL: I am just wondering why, Mr O'Mara, your union should be the authority on these matters.

Mr O'Mara: Can you ask us some sort of question that relates to the reason we are here?

THE CHAIR: If that is your answer, that is fine.

MR PETTERSSON: A point of order. Under standing order 234, I request that Mr Wall withdraw.

MR WALL: Withdraw what?

MR PETTERSSON: From the committee hearing.

MR WALL: Take my bat and ball and go home?

MR PETTERSSON: You are disrupting this hearing, given that this is about procurement decisions.

THE CHAIR: Mr Wall, you have been booted.

MR WALL: It is an appallingly low standard, Michael.

MS ORR: Mr Chair, I have a substantive question.

MR PETTERSSON: Maybe if you conducted yourself in a more appropriate manner, I would not have to do such things.

MR PARTON: I think it would have been appropriate for Mr Pettersson, as we got to this part of the hearing, to fully state his conflict of interest in regard to membership of the CFMEU.

MR PETTERSSON: That is on the public record. We are here to question witnesses about the procurement code. It is inappropriate to question members of the committee. As a member of this place, you should be aware of that. You have already insinuated things today that are inappropriate.

MR PARTON: I did not insinuate anything at all, Mr Pettersson.

MR PETTERSSON: You did not, actually; you just stated it.

THE CHAIR: Members, let us move on. Following on from that line of questioning, Mr Wall asked some questions, the point being that there are a number of concerns. Significant concerns have been raised by Federal Court judges, and you would be aware of those, with regard to the conduct of the CFMEU. What we are talking about here is legislating a role for the CFMEU in making sure that people comply with workplace laws. If you have an organisation that is described as a recidivist offender; that should be deregistered—and they are quotes from Federal Court judges—is that not a concern then if you are in a role telling others to comply with workplace laws when, as an organisation, those concerns have been raised?

Mr Smith: When you say legislating a role for the CFMEU, we are not the regulator,

nor is it proposed that we would be the regulator for this code. We are a strong voice for our members; our members expect nothing less of us. We are going to continue to be that strong voice for our members, and we will stand up whenever it is necessary. If we see bad OHS, if we see workers being bullied, we will continue to stand up.

MR PARTON: Whether you are breaking the law or not.

MS ORR: Can I have my question on the legislation before time runs out, please?

THE CHAIR: Sure. Let us move on.

MS ORR: Thank you. Some submitters have indicated that education and awareness raising would be a better approach than the proposed legislation and compliance regime. Do you have a view on that perspective?

Mr Smith: Yes. Education and awareness certainly have their role but, at the end of the day, the ACT government, like every government, should take a position that taxpayer money, government money, should be used only with those contractors who adhere to the law. Even after you have gone through the education and awareness process, you still need to have the consequence for contractors who choose not to adhere to the law and choose to do the wrong thing by their workers that they do not win government work.

Mr O'Mara: Part of your responsibility when you run and operate a business is to know and adhere to the workplace laws. As Zac said, there is a place for training and education but it is certainly not the be all and end all. Anyone who is running any sort of business in town, especially in the construction industry, should know the laws and should adhere to them. It is not that hard to comply.

MS ORR: But in your experience there are numerous cases where the laws are not being adhered to?

Mr Smith: Yes.

Mr O'Mara: Yes.

THE CHAIR: With regard to organisations that are found to be in breach of the law, do you think that they should be excluded from ACT government contracts?

Mr Smith: The whole way through, in terms of sanctions under the code, we have always supported a sliding scale, however that is structured. Obviously there are certain offences where it is a wilful underpayment or a large-scale wilful wage theft incident or something of that nature, which may warrant termination of contract or may warrant exclusion. But then there have got to be sanctions and remedies that scale back down towards more minor infractions, for lack of a better term. So we have always supported a sliding scale of sanctions, however designed.

THE CHAIR: Recidivist offenders, or offenders that are continually breaching the laws, should be excluded from the ability to contract, you would consider?

Mr Smith: What we have said with recidivist offenders or where you have had numerous complaints that have been sustained during this process is that the sanctions should escalate.

MS ORR: Where you have identified instances of breaches on behalf of your members and advocated on behalf of your members, have you found that there are instances where you will continue to have breaches against employers who have already had breaches brought against them previously?

Mr Smith: Yes.

Mr O'Mara: On numerous occasions there are phoenix contracted companies who just shut down one company and open another one tomorrow—same directors, same personnel, same staff, same plant and equipment—and they just move on to the next government contract tomorrow, so yes.

MR PARTON: Just placing themselves above the law.

Mr Smith: Yes.

MR PETTERSSON: Have any other jurisdictions used procurement policy to influence industry? If so, what objectives have they sought?

Mr Smith: Probably the most common example is the commonwealth's building code which applies to the construction industry, and procurements with the building code. The CFMEU's views have been pretty firm on that. That that was a tool used by the commonwealth government to further their agenda of de-unionising workplaces and undermining the legitimate role of unions. I note, though, that Queensland has recently implemented some procurement guidelines. New South Wales has implemented procurement guidelines. The Queensland ones are far more progressive than the New South Wales guidelines, as a matter of record. Other state governments have certainly used their purchasing power, as significant investors in government works, to influence policy outcomes.

THE CHAIR: On that issue of the Queensland procurement guidelines, my understanding, from evidence that was given by a witness earlier today, is that the threshold for contracts was $100 million, a significant amount, whereas the ACT figure is quite low. One of the concerns that has been raised is that if this legislation is going to come in, and by all indications it will, it is going to capture lots of reasonably small contracts and smaller operators, the mum and dad type operators, not necessarily the people who are in breach or have the ability to jump through a lot of hoops as may be required here. What do you think of the view that we could increase the threshold because what we are looking at here is perhaps the bigger contracts rather than all of the smaller ones, which will be very difficult to police?

Mr O'Mara: We do not believe so. You would have to ask the unions who are representing members in other areas where their contracts are much smaller, generally, than ours. But there are still significant contracts. I think the threshold is $250,000 but there is still a significant amount of work which goes on under contracts of that size. When you talk about compliance, the law is the law. We are only asking people to

comply with the Fair Work Act and other pieces of legislation, superannuation and the like. It is a requirement that they comply anyway, so it should be no more arduous than it is to run their business without being in the code; it is just that if you do not adhere to it then there can be sanctions.

Mr Smith: I would not hold myself out as an expert on the Queensland guidelines; I have not studied it at great length. But as far as I am aware the $100 million threshold applies to certain obligations, not the whole application of the code. The other thing that I think is worth noting is that in the ACT we have a very different profile of construction work to what they have in Queensland. Queensland has major resource projects, major infrastructure projects which, outside of the light rail project here in the ACT, we do not see. A lot of our projects, especially the ones that the ACT is funding, are under the $30 million bracket, for instance schools and swimming pools. A lot of those jobs are on a smaller scale by comparison to Queensland.

MR PARTON: Under the code, as we discussed earlier, a construction firm would be obligated to facilitate unlimited meetings with employees and union delegates to discuss whatever the union believes needs to be discussed, including provision of union membership application forms and a range of things. Under these laws, on my reading and certainly on the reading of a number of the peak bodies, the union would have unprecedented power to, if they so chose, grind a building site to a halt, because there is no time frame set for these meetings. It is unlimited. When we consider some of the comments that have been alluded to from Federal Court judges and others, how can the community trust that the union will not abuse this power? That is—

Mr O'Mara: I think the community has no dramas with the CFMEU in Canberra. I think we have got a good public profile and people understand the role we play in our industry. So I think people have plenty of trust in us.

Mr Smith: The overwhelming majority of builders which I and Jason and our branch have good working relationships with currently allow us to meet with their workers. And it is done without any of the fearmongering that maybe other people suggested would occur. This is not something that is going to be overly revolutionary, in the sense that we currently have meetings on sites. Builders allow us to have them, and we have good working relationships. We do not grind their jobs to a halt, as may have been suggested.

MS ORR: On the—

THE CHAIR: I am afraid we have reached the—

MS ORR: But Mr Parton asked his question after four, so I was hoping you could give me the same indulgence.

THE CHAIR: Okay. With your indulgence, Mr O'Mara, if you are happy to take the question. It could be a tough one. You never know.

MS ORR: Let me get to the question and we will all find out. The code is an instrument of the legislation and has not been finalised. My understanding is that it is out for public consultation at the moment. Have you participated in that consultation?

Mr O'Mara: We have obviously made a submission to this inquiry and we are intending to make a submission to the public consultation as well and to participate in that.

MS ORR: So you and any other business in Canberra could make a submission to that public consultation?

Mr O'Mara: Yes, and we have spoken to a number of workers and businesses, all of whom are keen to respond and keen to say that they support this bill and to counteract some of the unjustifiably negative comments that have been unfairly put out there.

MS ORR: So the—

THE CHAIR: You got one go at it, Ms Orr; you are done. Thank you, Mr O'Mara and Mr Smith. The committee secretary will be in contact if there are any other issues. You will receive a draft of *Hansard*. Thank you very much for your submission and for attending here today.

STEPHEN-SMITH, MS RACHEL, Minister for Aboriginal and Torres Strait Islander Affairs, Minister for Disability, Minister for Children, Youth and Families, Minister for Employment and Workplace Safety, Minister for Government Services and Procurement, Minister for Urban Renewal

YOUNG, MR MICHAEL, Executive Director, Workplace Safety and Industrial Relations, CMTEDD

THE CHAIR: Minister, Mr Young, thank you very much for attending today, the last witnesses that we will be hearing from with regard to your legislation, the Government Procurement (Secure Local Jobs) Amendment Bill. You are aware of the privilege statement before you, I assume?

Ms Stephen-Smith: Yes.

THE CHAIR: Minister, we have got an hour. Do you have an opening statement?

Ms Stephen-Smith: No, I do not think so, only really to note that while this inquiry is considering the Government Procurement (Secure Local Jobs) Amendment Bill there is also a parallel public consultation process that has been going on in relation to all the materials that would support the secure local jobs package. This is the second round of consultation on the package. That parallel consultation includes a draft secure local jobs code as well as some other supporting materials.

I note that there has been some commentary around a lack of consultation. I think it is important to draw the committee's attention, as I know others have, to the fact that there have been two rounds. This is the second round of pubic consultation. But in addition to that there have been a number of meetings, not only with employee representatives but also with industry representatives over many months, to discuss matters in relation to the secure local jobs package.

THE CHAIR: Minister, some of the witnesses today, including UnionsACT, were quite critical of, I guess, the ACT government and a number of its processes with regard to tendering and workplace law. They see this legislation as a remedy. In many ways it has also been criticised as just a duplication of other laws. Is there an issue less with the legislation and more with actual compliance of existing workplace laws? Is this actually necessary if all this is doing is duplicating existing laws and it is actually a failure of the ACT government to enforce compliance?

Ms Stephen-Smith: I think there are probably two parts to that. A lot of what the bill and code do is refer to existing laws. And we have been very clear in our acknowledgement that in most areas of industrial relations the ACT government does not hold responsibility. There are some areas of course where we do, in work health and safety and long service leave, those kinds of things. But what we have seen over various iterations, whether it is the industrial relations and employment scheme, ethical suppliers' declarations, the MOU, is various mechanisms that the ACT government has tried to put in place to ensure that the companies that we procure from, that we contract with, are abiding by their existing legal obligation.

You are right. Companies have a whole range of existing legal obligations in

industrial relations and workplace safety. But the evidence that you have heard today from United Voice and others is that companies do not always comply with those obligations. I refer members to a quick scan of the Fair Work Ombudsman's media releases as ample evidence that companies do not always comply with their existing legal obligations under that wide range of industrial relations legislation.

The ACT government has had these various mechanisms to try to ensure that we are contracting with companies that do comply with their existing legal obligations. The MOU has obviously been criticised from both sides, for various reasons. That was one attempt to try to ensure that we had a checking mechanism, that the companies that were tendering for contracts were compliant. We had a good record of compliance with their industrial relations and employment obligations. There is a recognition, I think, that that has not been the best way of going about it.

Obviously there has been criticism from your side of politics and from others about a lack of transparency, although it has been a pubic document for many years. There has also been criticism from employee representatives that, not being legislated, it is relatively difficult to enforce. It relies on a mechanism of them actually putting in a lot of work to check the background of companies that are tendering. And then there have been questions around whether or not that information could be considered.

The process itself was not considered to be the most efficient, effective process to achieve our outcome, which is to ensure that the ACT government is contracting only with companies that meet their industrial relations and employment and workplace safety obligations.

The commitment that was made prior to the 2016 election was that we would legislate a transparent regime where employers and employees would understand the requirements of the ACT government that would create a level playing field for employers so that those who are doing the right thing by their workers are not getting undercut by those who are doing the wrong thing.

I think, the second part of your question, and some of the things that were discussed with United Voice earlier, was around how we manage those contracts subsequent to the tender process. It has been difficult, when companies are identified to be potentially be doing the wrong thing, for the ACT government to have any mechanism to enforce compliance with laws that we do not necessarily have enforcement compliance regulations around.

We have the enforcement and compliance responsibility for work health and safety but we do not have enforcement compliance responsibility for fair work. How do we put in a mechanism where we can hold to account companies with which we contract? Our view was that creating a transparent regime that was legislated gives public servants the authority to act and makes it very clear to industry what it is that is expected of them as contractors to the ACT government.

MS ORR: Mr Young, it looks like you were going to add something.

Mr Young: I would be happy to, thank you. I acknowledge the privilege statement. Having also heard the testimony earlier today, I took some notes on that issue and I

summarised it in my notes as "verification not duplication", by which I mean that the bill is not intended to duplicate existing statues; rather it establishes a regime that allows the territory to actively verify that the tenderers that are choosing to engage with us are compliant with their workplace relations obligations. That is desirable from both a social policy but also a due diligence perspective.

Furthermore, it means that the process of verification is transparent, based on administrative law principles and subject to appeal. These are things that stakeholders from both sides of the fence have advocated for historically and continue to advocate for. In fact, the MBA's testimony earlier today, I think, made mention of those administrative processes and appeal rights.

Those facts are, I think, also apparent in the bill where you will note that all the penalty and compliance mechanisms that are provided in the bill are actually limited to the territory's exercise of contract powers or its administration of a prequalification scheme. In that sense we are not stepping into the shoes of other regulators. In fact, the bill includes a provision to allow complaints received about those other statutes to be referred on to the regulator with responsibility.

THE CHAIR: I might go with a bit of a supplementary. The concerns that have been raised, and the fear about this bill from, I think, sections of industry, are that it will be used by the union movement, whoever that may be—but certainly concerns raised by the MBA that the CFMEU will then use this—in essence, as a bit of a power of veto. "Sign an EBA or do what we want or else we will be lobbying or vetoing," because they have a role in making recommendations or putting their view forward, in terms of who should get a contract.

How are we going to make sure that it is a legitimate concern being raised by a particular union, be it the CFMEU or someone else, and not part of, I guess, an industrial, heavy-handed tactic to try to get someone to sign up to EBAs or increase union membership or only those companies that have got lots of union members getting the job? That is the fear. It can be used, as has been said. The MOU has been used by the union movement to coerce businesses to comply with what they want, otherwise the union will use their influence in this process to stop those companies getting contracts. That is the fear.

How are you going to allay that fear? How are you going to give confidence to business that that is not the purpose of this, that this simply has the purpose of making sure that everyone is compliant, which we would all want to see—all representative groups and I am sure all members of this committee? How are you going to prevent that fear of the business community? It is real; you have heard the testimony.

Ms Stephen-Smith: I will hand over to Mr Young because I did not see the MBA's testimony. He is probably going to have a much more informed answer, as he did last time, but I just want to put on record very clearly that it has been claimed many times that the MOU provides a right of veto. That is not true, that has never been true, and it is definitely not true that what we are doing is legislating the MOU. In that context I think I would hand over to Mr Young.

THE CHAIR: Can I go to that point? Section 4.3 of the MOU basically says that the

unions selected by UnionsACT, or UnionsACT, get to look at various factors—industrial, workplace laws—and put their view forward to the tenderers. Given that the relationship with the unions is now going to be legislated in this process, if you have a union that is saying, "Our view is that, from an industrial point of view, this company should get the tender, not this company," how are we going to make sure that that view—which I am sure will be taken into account, otherwise why have it—is legitimate?

Ms Stephen-Smith: As Ms Ryan indicated, in the MOU process it is about the provision of advice on the industrial relations and employment record of those companies that are tendering. As Ms Ryan indicated, unions are often well placed to provide advice to the tender panel around the industrial relations record of those companies, but they are not decision-makers in the process and nor have they ever been.

THE CHAIR: Their advice obviously counts significantly in this process. If you have a union saying, "This company has a bad record of X, Y, and Z, and shouldn't be getting the tender," that will obviously have a weighting in the procurement process; otherwise why is it in this process and in the MOU on the legislation at all?

I am asking: given some of the comments that have been made about the CFMEU by Federal Court judges—being recidivist offenders, and their record in terms of fines and so on—how do we make sure that these legitimate concerns are put forward? Obviously, it is the case that a number of issues have been raised. The fear of industry is that there will be the use of a coercive power. What is the mechanism? Do you audit what the union is putting forward or do you just take it carte blanche?

Ms Stephen-Smith: That is a really good point. It is actually about due diligence, and it is part of a due diligence process, not really part of a weighting process. I will hand over to Mr Young to describe this, but what we are proposing in the bill is actually a completely different mechanism in any case.

Mr Young: As you would have seen, the bill establishes a registrar, which will be a statutorily appointed position with specific powers and functions, including the ability to receive and respond to complaints. A complaint can be made by any third party, so there is no limitation and there is no specific carve-out for unions or any other entity. However, on receipt of a complaint, the processes that would be followed by the registrar in investigating and responding will be transparent. They will appear in subordinate legislation guidelines, and they will provide for things, including right of reply and right of appeal to the ACAT, in the event that a complaint is found to be warranted and have sanctions applied.

THE CHAIR: Who appoints the registrar? The minister or cabinet?

Mr Young: The minister will appoint the registrar.

THE CHAIR: You appoint the registrar.

Ms Stephen-Smith: But it would go to cabinet as those appointments generally do.

THE CHAIR: With respect to the auditors that are mentioned in the legislation, who are the auditors? There are auditors who can go in to make sure that people are complying. Who is an auditor?

Mr Young: The registrar would appoint or approve auditors. The identity of those auditors would be published and available to people who seek to use their services. There is an existing regime in place, as you would be aware, for the construction industry, which is the IRE regime, where a similar mechanism operates, albeit under policy rather than being legislated.

THE CHAIR: Are the auditors government officials or members of unions? Who are the auditors?

Mr Young: These would be auditors who have applied and demonstrated that they have the credentials and the experience, and there would be subordinate instruments that spell out what they are; then there would be a process by which the registrar would appoint them.

There would also be mechanisms in place to prevent conflicts of interest from arising between auditor and audited. For example, I expect that there will be a requirement that a particular auditor not provide three or more consecutive audits, or things of that nature. I should emphasise, though, that this is material that would be covered in the secure local jobs code and other subordinate instruments, which are subject to a separate consultation process. However, the bill, as you would have seen, does establish the power of the registrars who are to approve auditors.

THE CHAIR: The registrars get a lot of power.

MR PETTERSSON: We have heard from numerous people today that this bill will be onerous, burdensome and create red tape. Is that the case?

Ms Stephen-Smith: No, that is certainly not our intention. One of the things we need to be clear about is that there are a lot of existing requirements that tenderers have to meet in tendering for ACT government work, including, for example, the local industry participation plan, in some cases ethical suppliers declarations, and a lot of other issues around probity and, as Mr Young said, the industrial relations and employment certification scheme for all building, construction and maintenance activities in that space. I would note in that regard that there are more than 1,300 businesses in the ACT that currently hold industrial relations and employment certification.

The aim of this process is to operate a precertification scheme similar to IRE that will create that level playing field for businesses that are doing the right thing. Once they are precertified, once they hold a code certification, that will then be good for whatever ACT government tenders they wish to apply for and submit a tender for.

One of the other things that I have already talked to procurement about—and having the new ministerial responsibility for government services and procurement is pretty handy on this front—is how we streamline the front-end requirements for businesses around local industry participation, the proposed upcoming Aboriginal and Torres

Strait Islander procurement policy, the secure local jobs code requirements and other requirements in the procurement space. We are also taking on board feedback from the Business Chamber that the process can be a bit confusing for local businesses. It needs to be more tailored. This will not happen overnight, but we need to be more tailored around the information that we provide at the front end to businesses.

If you are this kind of business wanting to tender for this kind of work, these are all the requirements that you need to meet. If you are this kind of business wanting to tender for this kind of work, these are all the requirements you are wanting to meet. Certainly, my goal is not to increase red tape. There will be businesses that do not currently have to hold IRE certificates that will need to be code certified. We heard from United Voice pretty clearly why cleaning and security are first cabs off the rank in relation to that.

The aim has always been to create a transparent system, a system that is efficient, and, as Mr Young said, a system with checks and balances so that we are creating a level playing field for businesses who are doing the right thing.

MR PARTON: There are probably some here who would think that this is not a valid question, but I want to pre-empt that by saying we have had some discussion in this room today about bullying. We have also had some discussion about—

Ms Stephen-Smith: There is a lot of discussion going on nationally about bullying, Mr Parton.

MR PARTON: There is indeed. There has also been discussion in very recent times, since you have been in this room, about the potential influence that unions, either through the MOU or through this process, have on procurement, and, in essence, the influence that the union has on government. My question, initially, is to you: did you feel intimidated by the CFMEU campaign that was run not long before the presentation of this bill? You will know the one that I mean—the one with the flyers with your face above the words "partners in crime". Did you feel intimidated or bullied in any way by that?

Ms Stephen-Smith: That was a very long question for a very short answer: no, Mr Parton.

MR PARTON: You would not classify that sort of behaviour as bullying?

Ms Stephen-Smith: I said at the time that politics is a robust business, Mr Parton. Unions are quite at liberty, as are employer organisations, to put forward their views.

MR PARTON: Did UnionsACT or the CFMEU make it clear to you what fate would befall you if we did not proceed with this bill in its current form?

Ms Stephen-Smith: I am not sure that I understand your question, Mr Parton. This bill has been in drafting for quite some time.
MR PARTON: It has.

Ms Stephen-Smith: It is a complex piece of legislation. The interaction between the

code and the bill has taken quite some time to pull together, so that we understand how all the bits are going to work, so that it is as easy for business to understand, when we get to that point, as possible, and so that it is as efficient and easy to implement as possible.

MR PARTON: During that process you have not felt under pressure from UnionsACT, from the CFMEU, in any way, shape or form?

Ms Stephen-Smith: No. This government works collaboratively with employee representatives to ensure that—

THE CHAIR: Clearly not.

Ms Stephen-Smith: our mutual goal of ensuring that the ACT government contracts only with companies and organisations that are meeting the highest ethical and labour relations obligations. We have a joint goal and we have been working closely together to ensure that we achieve that.

MS ORR: Minister, can you outline for us the time line for the drafting of this bill?

Ms Stephen-Smith: The first round of consultation on the structure of the package was undertaken in February-March; I think submissions closed in March. The detailed drafting of the legislation probably started at around that time. We were starting to think about what was in the code, what was in the bill, what other subordinate instruments were required and what those were going to look like. That process has been going on prior to that first round of consultation in February, and obviously since those submissions were received in March.

MS ORR: The submissions that came in were from a range of groups?

Ms Stephen-Smith: Yes, and they are almost all public.

THE CHAIR: You said that you work very cooperatively. Why did the union distribute a document that has a picture of you, saying, "ACT government and bad bosses—partners in crime"? That does not sound particularly cooperative.

MS ORR: That might have been a question better put to the union.

Ms Stephen-Smith: Yes. You have just had the CFMEU give evidence. I am not going to speak on their behalf.

THE CHAIR: You said you are working cooperatively. How do you correlate your statement that it is all cooperative and there is no coercion or pressure when they are distributing documents like that? Your statement that it is all cooperative and there is no pressure does not correspond with that leaflet that was distributed across your electorate.

Ms Stephen-Smith: As I said at the time, my door is always open to them. We were working together to work through the details. How they choose to campaign is a matter for the CFMEU.

MS ORR: Minister, you outlined the drafting process that this has gone through. It sounds like that was well in place prior to the leaflet that Mr Hanson and Mr Parton have referred to. Did the leaflet change the timetable or have things been proceeding as per the drafting and introduction schedule that you had always—

Ms Stephen-Smith: To the best of my recollection, I introduced the legislation the week after that flyer was distributed. No, it did not change the time frame at all.

THE CHAIR: A happy coincidence.

MS ORR: Minister, many submissions have commented on the need for a transitionary period to allow for education of the sector. Do you have any comment that you would like to provide on that?

Ms Stephen-Smith: Do you want to comment on that?

Mr Young: Certainly. Some of the evidence given earlier, which quoted a very high number of certificates that would need to be audited and issued, assumed that the full cohort of entities would need to be audited and have to have their certificates in place by day one. A point that I should make is that the new arrangements would only apply to new works put to tender after the commencement date. The actual need for entities to have contracts in place is not such that everybody needs it on day one, but all tenderers for new work would need to have one.

That is a very long way of explaining that the audit regime needs to be able to ensure that people who are planning on putting in tenders for new work are able to have a certificate at the time that they are tendering. There are, in our view, sufficient auditors already operating in the IRE regime. That would seek to be approved and be able to be approved under the proposed new arrangements to support that level of volume. There are arrangements in place via the Legislation Act that allow for administrative practices, for example, the interim appointment of a registrar and the operation of an audit regime to occur prior to the commencement day.

Our view at the moment is that there is sufficient time. However, that being said, we are assuming that a bill will be passed. To an extent that is subject to the outcome of this process and any changes that might arise. As of this point I am comfortable that there are resources and mechanisms in place to meet demand. However, if the passage of bill date gets pushed back, we would need to revisit that issue.

The bill provides transitional provisions. This goes to another issue that was raised earlier around why we have selected those particular industries for the first tranche. It does provide an incremental commencement over a period of around 12 months, with the ultimate goal of capturing all large contracts that are primarily for labour. On that question of why industries were selected, in a sense, I think that needs to be understood as a transitional question rather than a total targeting question. We are able to then consider not just questions around the degree of insecure work, which was one of the suggestions as to the primary driver, but transitional issues.

For example, with the construction industry currently being subject to an IRE, it was

practical to let them be part of the first tranche; likewise those other industries were able to be considered in the context of the mix of government contracts that are going to be let to those industries as well as issues such as their WHS compliance.

MS ORR: The legislation enables a local jobs code advisory council to be established. Will that be established from the start of the operation of the legislation and will it help with the transition period?

Mr Young: That is essentially a ministerial advisory body. That will provide advice to the minister on the overall operation and transition. Its input would certainly inform the later stages of the rollout, I would expect.

MS ORR: Just for the record, what will the make-up of that council be?

Mr Young: They are ministerial appointments.

THE CHAIR: It is on pages 18 and 19—

MS ORR: I know, which is why I said it was for the record.

THE CHAIR: of the legislation. It is the registrar, three union reps or employee reps, and three other people to help out, or words to that effect. Three other members will be appointed by the minister who are considered to have the appropriate qualifications or experience to assist the council to exercise its functions. Actually, that goes to a supplementary that I have. You have the registrar, you then have three employee reps—no doubt union officials of some form—and three others who help to provide that advice. But there is no designated employer representative. Why not?

Ms Stephen-Smith: I would expect that among the three other members appointed there would be employer representation.

THE CHAIR: Why, though, have you been specific in nominating three employee reps but it is left to the ministerial discretion as to whether there will be an employer appointed? Is that a bit of an oversight?

Ms Stephen-Smith: I think it goes back to the point that Ms Ryan made about the expertise of the unions in understanding the industrial relations system and the landscape in the ACT.

THE CHAIR: I do not dispute that, but it is also clear that there are different views in this space, different perspectives. It seems to me that if you are going to have three appointees who are specifically there to represent the views of employees but nothing to mandate the views of employers, that is perhaps something that could be considered. Anyway, it might form a recommendation.

Ms Stephen-Smith: No doubt it is something that the committee could consider. I would also say—

THE CHAIR: I note your point that it would be an expectation that one would be, but if you are going to be explicit on one side, perhaps we should be explicit on the other.

Ms Stephen-Smith: Or possibly three would be, but I think it is important that there is some flexibility around ensuring that there is a mix of expertise. For example, on the Work Safety Council—

THE CHAIR: Sure, but your flexibility is on one side, not on the other.

Ms Stephen-Smith: For example, on the Work Safety Council we have independent members as well, including academics who have expertise in particular matters that the Work Safety Council is looking at at any point in time.

THE CHAIR: Sure. It just strikes me that it is explicit about union members but not about others.

MR PARTON: Based on that example that you have given, could we not assume then that it is possible that we could get three union members, as is mandated, one or two employer-based members, and an academic hand-picked by the minister, for argument's sake? That would be possible, wouldn't it? We would not necessarily have three employer-based members.

THE CHAIR: You could have zero.

MR PARTON: You could have zero.

THE CHAIR: You could have zero based on the legislation.

Ms Stephen-Smith: Mr Parton, your interpretation of the legislation is correct.

THE CHAIR: It could be zero; it could be any number between zero and three.

MR PARTON: You could add another union member if you wanted to. Maybe you need more; I do not know.

THE CHAIR: You could have six union reps. Do they get paid? Mr Young is indicating no.

Mr Young: No, they are not remunerated positions.

THE CHAIR: I will move to my substantive question, that is, the issue that has been raised in a number of submissions and in the evidence today about conflict with federal laws. Some witnesses have said that it will conflict; some have said it will not. The legislation, I note, at 22P, is titled "Exemption from the code". It states:

> The registrar may, on application by an entity, exempt the entity from a requirement of the code if the entity satisfies the registrar that complying with the requirement would result in the entity not complying with a Commonwealth law.

What federal laws are we talking about in regard to this legislation or the code that sits in the subordinate legislation or regulation?

Mr Young: That was a significant concern that has been brought to our attention by all stakeholders since the very early days in February when we released the discussion paper. The drafters have been conscious of the need to avoid inadvertently drafting something that establishes a conflict with commonwealth law. That was one of the factors that made it quite a complex draft and why it was some months in preparation in terms of the draft bill.

However, a number of elements were added to the bill in the later stages of drafting in direct response to feedback from the business peaks, where they expressed concern around industry understanding of the interaction between the ACT and particularly commonwealth statutes. Two statutes of the commonwealth were of particular concern in that feedback. One was the Fair Work Act itself and the other was the commonwealth's code for the tendering and performance of building work.

In response to those concerns, in the later stages of drafting a number of elements were added to the bill. One is section 22M(4) which explicitly provides that the secure local jobs code must not be inconsistent with the Fair Work Act. That is arguably a redundant provision because that requirement also arises from other statutes such as the self-government act. However, it was added to give confidence to stakeholders and to avoid any doubt. It makes it very clear that it is beyond the territory's power to legislate something in conflict with Fair Work. That would include things such as right of entry for union officials to workplaces and a whole range of things where Fair Work is quite prescriptive. We have been very cautious to avoid those conflicts and have added section 22M(4) to make that abundantly clear.

The other change that was made is proposed section 22P, which allows the registrar to effectively exempt an entity from any territory requirement of the territory code that, if applied, would make that entity non-compliant with a commonwealth law. That was to deal explicitly with the commonwealth building code. The publicly stated policy of the government since the outset of this project was that we seek to avoid placing contractors in a position where they have to choose between doing territory work and work for the commonwealth. That is an issue where both employer and employee representatives have been in vigorous agreement. We understand that there are about 40 ACT entities that are currently operating in both the ACT and commonwealth building code environments.

That provision, the exemption provision, was considered necessary because of the interaction between the commonwealth building code and this ACT code. They are essentially both opt-in schemes. An employer who chooses to opt for one or the other is not necessarily placed in conflict. While I am not a constitutional lawyer, it is possible that both of those statutes could operate in parallel quite effectively. The tension is created where an entity wishes to tender for both. To remedy that specific situation, this provision has been added. With those two additions, it should be very clear that there is no conflict with the Fair Work Act.

THE CHAIR: Is it your advice to small business in the construction sector to employ a constitutional lawyer to try to work their way through this complexity?

Mr Young: Fortunately, the regulation takes care of that by giving the registrar

powers to issue that exemption on their certificate.

MR PARTON: It is still up to those businesses, is it not, to try to establish whether ACT or federal law takes precedence? It is up to the businesses themselves to do that, isn't it?

THE CHAIR: They have to put a submission in, I suppose, to the registrar. We are told on the one hand that there is no extra red tape with this, and that it is all easy to comply with. What you are telling me now is that there are at least 40 businesses that are now going to have to look at this, probably get a lawyer to work out whether they are in conflict with federal law and then put a submission together to the registrar and apply for an exemption. How does that correlate with your statements that there is no additional red tape involved?

Mr Young: Those 40 businesses are already operating in the ACT and commonwealth code environments and are already having to form a view on whether doing so potentially puts them in that sort of situation. In a sense they would still be required to do that and make applications with the—

THE CHAIR: But they are not required to do so at the moment. There is no exemption as such that is required. It is this piece of legislation that risks putting them in conflict.

Mr Young: I need to be cautious because I do not want to be trying to describe the operation of the commonwealth building code, but it goes to the business operations and policy choices that particular entities make, and it applies to the totality of their business. I think it is possible at the moment that an entity operating in any multiple jurisdictions, be it the commonwealth and the ACT or New South Wales, needs to consider what they are doing with their business operations to ensure that they are not inadvertently putting themselves in conflict with one of them.

THE CHAIR: That is right, but this mandates certain things that they have to do which may put them in conflict with the code.

Mr Young: And it creates—

THE CHAIR: At the moment they operate within the federal building code, and they make sure that their work practices are harmonised. This imposes on them certain things that may or may not be in conflict with that code and they have to try to muddle their way through it. It is difficult to see how that does not require some pretty significant legal advice, extra compliance and certainly a submission to the registrar. When we hear from officials, ministers and other witnesses that there is no additional red tape, it sounds like there is to me.

Ms Stephen-Smith: I probably have a couple of points to make around this. The drafting of the code has been pretty careful in endeavouring to avoid conflict with the commonwealth building code. Our view, in drafting the draft code which is currently subject to consultation, was that there should not be a direct conflict with the commonwealth building code.

However, we recognise that some respondents to your process, and doubtless to our consultation process, will identify inconsistencies and areas where they may consider that they will put themselves in conflict with the commonwealth code. We will, of course, work through that as part of this consultation process. As part of the consultation process, advice has also been sought from the commonwealth department of employment—whatever it is called now—in relation to those matters.

THE CHAIR: You have written to them on this draft bill to seek their advice?

Ms Stephen-Smith: I wrote to Minister Laundy a couple of working days after the bill was introduced. Officials have also been discussing this for some time at officials' level.

THE CHAIR: When do you expect a response on that?

MR PARTON: He is no longer the minister.

Ms Stephen-Smith: Minister Laundy is no longer the minster; that is true.

THE CHAIR: Who is the minister now?

Ms Stephen-Smith: I hope that correspondence continues.

MR PARTON: I certainly spoke to him and he was most concerned.

THE CHAIR: How long before that gets back? It seems to me that moving ahead with this before getting that advice back would be problematic.

Ms Stephen-Smith: We are hoping to get some advice from officials.

Mr Young: We have invited their feedback as part of the consultation process around the secure local jobs code. The closing date for that has been extended, on application, to the 17th. I hope they will make a submission but I am yet to see one.

Ms Stephen-Smith: The other point I would make, Mr Hanson, about clause 22P of the bill is that it is also about futureproofing our own legislation. We cannot predict what changes in commonwealth law might be made over time that may change the situation. We know, for example, that if there is a change of government federally, it is quite likely that the commonwealth building code will either no longer exist or certainly not exist in its current form. On the other hand, if there were ever to be a majority coalition in the Senate, they may change the code in a different direction.

As Mr Young said, we do not intend to create conflict with the commonwealth. We need to ensure that businesses understand that if they believe that they are in a position of conflict, they can apply for an exemption.

THE CHAIR: Can you provide the committee with the federal government's response? Is that possible? It may inform our recommendations.

Mr Young: We will be publishing submissions that are received as part of that

process, unless we receive a request to treat them as confidential.

MS ORR: But that submission is to the code, not to the legislation; is that correct?

Ms Stephen-Smith: That is right.

THE CHAIR: Yes. They will be published on the—

Mr Young: On the government procurement website, unless we have had a request to treat submissions as confidential.

THE CHAIR: That one will be particularly interesting.

MR PETTERSSON: In other jurisdictions are procurement decisions made in this way? If so, what have their objectives been and how would the ACT compare under this bill?

Ms Stephen-Smith: Obviously, the federal government do use procurement, with the commonwealth building code that we have been talking about. Their very clear objective is an anti-union objective. A previous Liberal government in Victoria also established a similar objective; that is my understanding. Mr Young might be able to comment more broadly.

Mr Young: Most, if not all, government jurisdictions have a government procurement act or equivalent which articulates the policy intent that they are seeking to achieve by way of procurement powers. We looked at a number of those as part of the consultation process, including the ones that the minister mentioned. As previous witnesses have flagged, Queensland has more recently made announcements as well which we are watching with interest.

MR PARTON: I want to make mention of one of the questions that was raised in the Business Chamber submission. They were asking if consideration has been given to national privacy laws with respect to authorised persons accessing records and copies of employment-related documentation for any employee. What can you share with me on that?

Mr Young: The drafters of the bill certainly had regard to privacy principles and the Human Rights Act. We have recently received the scrutiny report on the bill, which made reference to privacy issues around the provisions for the publication of registers, and we will be responding to those comments in due course. Certainly, consideration was given to the types of information that would be collected and what would be put on the public register, for example, with a view to ensuring that there are no breaches of the territory's privacy principles, which I think are quite consistent with the commonwealth's.

Ms Stephen-Smith: Mr Parton, are you or the chamber referring to proposed section 22S of the act, about requests for information that would be made by the registrar?

MR PARTON: I think what they are talking about is actually in the code. They were also extremely concerned; they asked whether you could provide detail around the

required union information that is to be provided to employees in these facilitated meetings that are outlined in the code. I do not know, Mr Young, whether you heard the evidence from the Business Chamber, but they were worried that, because it is not specified as to how long meetings will go for and they are unlimited meetings, it could be used as an industrial relations weapon.

Mr Young: I did hear that, and I can confirm that submissions from the chamber have raised those issues in the context of our earlier consultation. A number of changes were made to the consultation draft code that is currently out for comment in response to that type of feedback. Several provisions, for example, include a description of the types of things that an employer can do to demonstrate compliance against some of those requirements. Certainly, there is one particular provision that they talk about, which is the one around elected workplace delegates requesting meetings. An important distinction to make there is that, for that provision and all of the other relevant sections of the code, to the extent that it refers to a union, it is referring to employees of the business who are the elected workplace delegates. Certainly, that feedback has been taken and it will be factored into the ongoing consultation around the code.

MR PARTON: Apart from saying that that feedback has been taken, what can you do to allay the fears that employers have that under this provision they could be subject to 15 meetings a day?

THE CHAIR: For example, is there something in the code that would mandate the frequency and duration of any visits by employee groups—unions coming into a business—to say, "You can't visit"? The fear is that they will say, "I'm here to inspect this," or "I'm here to do some training," and they turn up three times a day, just to disrupt that business, until such time as they sign an EBA.

Ms Stephen-Smith: One of the important things that Mr Young just pointed out is that some of the provisions that the Business Chamber is referring to relate to the role of workplace delegates. It needs to be very clear that the code does not provide a right of entry for unions into workplaces. That is something that explicitly the ACT government cannot do under the Fair Work Act.

MR PARTON: Hang on; you are talking about a workplace delegate in terms of a delegate to the union, aren't you?

Ms Stephen-Smith: A workplace delegate is an employee of the employer.

MR PARTON: Are we still not talking, though, about a workplace delegate who is connected to the union through that mechanism?

Ms Stephen-Smith: Yes, a union workplace delegate.

MR PARTON: Yes, that is what we are talking about.

Ms Stephen-Smith: Yes. I just needed to be very clear because both of your questions implied that a union would be coming onto the site, into a worksite, and being given a right of entry to the site.

MR PARTON: It will already be mandated that the union has to be there, because there has to be a workplace delegate. In essence it is mandated that the union already has a presence.

Ms Stephen-Smith: It is certainly not mandated that delegates need to be elected. Workplace delegates are existing employees who would be elected by other employees in the workplace.

MS ORR: As a former workplace delegate for my union, the CPSU, when I was in the public service, I was elected by fellow members of the union to be a workplace delegate, which meant I turned up to work every day and did my job. If other employees had concerns that they wanted to raise with their workplace delegate, they could come and approach me at any time. That was permissible under the employment arrangements in my department. We would have a quick chat or follow it up from there. I was not an employee of the union; I was an employee of the department and I was a workplace delegate. There is a difference.

Mr Young: In answer to one of the earlier questions around what we can do, I begin by acknowledging that the chamber has residual concerns along these lines, and I acknowledge them. In the later versions of the code where, for example, there is an obligation on an employer to guarantee worker rights in some respect, we have inserted a follow-up provision so that, for the purposes of the code, the previous subsection will be considered met if the entity does X, Y and Z. By trying to clarify and scope the extent of those obligations, that is how we have responded to concerns that there may be an open-ended or a not clear obligation in the code. Going to the earlier point, these are matters that are covered in the code and they are part of an ongoing consultation process.

Ms Stephen-Smith: In that regard I might respond to a point that I heard earlier in relation to inductions. There was an implication that union officials or delegates would be undertaking inductions relating to work health and safety. The standard contract terms that have been circulated for consultation indicate that the territory contract may require industry experts or union workplace delegates to attend staff induction sessions. I think that the bow that was stretched was stretched way further than was conceivable at all under any of the material that is out for public consultation.

MS ORR: We have heard from a number of witnesses today that the legislation and subsequent instruments will increase costs for businesses. Do you have any idea of what the cost of certification might be?

Mr Young: One of the previous witnesses expressed a view that the primary source of additional cost and overhead would be, in their view, the cost of the audit. As you would be aware, there is already a similar audit regime in place for construction contracts; that is, the IRE regime. Based on the experience of that scheme, we estimate that the audit costs will range from around $200 to around $1,300, plus auditor disbursements.

However, the ultimate charges will be determined by the market and will be subject to the size and complexity of the organisation that is audited. That being said, I think the

concern that was raised was in the context of small and medium sized enterprises. I would expect that, based on some assumptions around size and complexity, their audit costs would be at the lower end of that range.

MS ORR: Noting that the IRE scheme already requires audits, through that process have you ever seen any evidence that the audits currently in place and the costs have deterred businesses?

Mr Young: I looked at that question quite recently. We found that more than half of the current construction contracts are let to small and medium sized enterprises who have been subject to that IRE regime. Our view is that a similar regime should not be an impediment to small and medium sized enterprises being able to compete for government business.

Ms Stephen-Smith: At least in the initial phase, the advice I have is that the majority of contracts that will be affected by the secure local jobs code will be in that construction and building maintenance area, so they will be companies that would already be required to have an IRE certification. As I mentioned earlier, more than 1,300 companies have a certification. That register is available online, so it may be worth while for the committee to have a look at that. There are, as Mr Young said, a number of small local businesses that do not seem to be deterred by that.

The other point to make about that—I think it is in the bill, not the code—is that the standard length of a certification would be 18 months as opposed to 12 months currently for IRE. But the registrar would have discretion to approve a certification for a shorter or a longer period, depending on the record and circumstances of the organisation.

Mr Young: There was a suggestion made earlier that employers who are currently required to have an IRE certificate and who continue to need to have one might find themselves in a position where they are having to be audited twice: once for the secure local jobs code certificate and separately for the IRE. That is not the case. The secure local jobs code certificate audit regime will meet or exceed the standard of the IRE in all respects. Therefore having the secure local jobs code certificate will constitute effectively a deemed IRE that will be managed administratively without cost to the applicant.

THE CHAIR: Minister, this is obviously quite controversial legislation; it certainly splits this committee, I think it is fair to say.

Ms Stephen-Smith: That does not come as a surprise, Mr Hanson.

THE CHAIR: Mr Pettersson and I are not on a joint ticket! It also split our witnesses. You have employer groups on one side and employees on the other. I am assuming that this will go through the parliament in one form or another. What process will there be to evaluate it? As it rolls out, will the fears of business groups be true or will it all be sunshine and lollipops, as the unions would attest? Have you considered an independent review of the execution of this legislation to see that it is actually achieving the outcomes that you have asserted that it will? After a period of operation, will there be an independent review that can then report back to the Assembly and say,

"Okay, it is problematic," or "No, it is having the right effect"? In that way the concerns that are there will not linger for years to come.

Ms Stephen-Smith: I would note that you have one submission from a business that is supporting the bill, Mr Hanson.

THE CHAIR: I do not think the MBA is going to bully them.

Ms Stephen-Smith: Going to your substantive point, there is provision made—again I am not sure if it is in the bill or if it is a separate commitment—to review the implementation within two years. With that review, the provisions around that would be that—

THE CHAIR: Could you get back to the committee as to where that—

Ms Stephen-Smith: that review would be overseen by the advisory council.

THE CHAIR: That is the advisory council that is stacked full of unions, isn't it?

Ms Stephen-Smith: I would say that it is the advisory council that has been appointed by the minister.

THE CHAIR: Okay; that is legislated to have three union reps and no business reps.

Ms Stephen-Smith: It is not legislated to have no business reps; that would be a misrepresentation of the bill.

THE CHAIR: It would; I withdraw and I say: legislated to have an ambiguous number of business reps.

Ms Stephen-Smith: Yes.

Mr Young: Section 22ZD of the bill says:

> The council must review the operation of this part before the end of its 2nd year of operation.

In doing so it must consider certain things.

THE CHAIR: You can see how the council reviewing something that they have been appointed to, and with the majority comprising employee representatives, may not be viewed by people who have raised concerns about this legislation as being an independent review. I will leave it there. Minister and Mr Young, thank you very much for appearing today. I appreciate it.

Ms Stephen-Smith: Thank you very much. This was a very polite hearing, and I greatly appreciate it.

THE CHAIR: Thanks very much. The secretary will be in contact if there are any follow-up issues. As normal, a copy of the draft *Hansard* will be available for you to

review. I will look forward to debating this in the Assembly in due course, after we have tabled our committee report.

Ms Stephen-Smith: Indeed; thank you very much.

The committee adjourned at 5.04 pm.