

# Participation, Fragmentation and Union Response: The 1998–2000 ACT Public Sector Bargaining Round and the Workplace Relations Act

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The current Australian Capital Territory (ACT) public sector workplace bargaining round lasted more than two years with most agreements involving a trade-off between low wage outcomes and protection of job security within performance improvement measures. The main focus of this paper is on government and agency experiments with bargaining structures and processes. The first was a limited and largely unsuccessful attempt in 1998 and 1999 at participative agreement making without the involvement of the key unions. The second, a selective decentralisation of bargaining to parts of a single business, was more successful: of 50 agreements, over 40 have been achieved. The procedural success of the decentralisation strategy is a significant outcome. However, the fragmentation strategy contained internal contradictions and required strong centralised policy control of bargaining agendas and outcomes, leading to delays and breeding distrust. Unions conducted effective defensive campaigns against non-union agreements and involuntary redundancies, but face their own dilemmas in finalising this round and preparing for the next.

The still incomplete 1998–2000 round of ACT public sector agreement making has been the second under the Carnell government, but the first conducted under the Workplace Relations Act 1996 (WRA). While free of the overt confrontations between unions and government that occurred in 1995, this round has generated little employee enthusiasm for a process which lasted in some cases almost two years, and resulted in salary outcomes dispersed around a low median of 5–6 percent over three years.

Bargaining in 1998–2000 has included a number of experiments, within the context of market-driven public sector reform, with two bargaining models — a 'consensual participation' model based on non-union staff agreements; and a 'fragmentation' model in which bargaining structures are very decentralised. The first model, involving a limited attempt in the first phase of the round to replace or supplement union-management negotiations by informal, directly participative bargaining, did not succeed at the collective level, although unions did find themselves having to accept the introduction of individual Australian workplace agreements. The second model — that of fragmented bargaining — was more successful. First,

managements succeeded in cordoning off negotiations with the potentially more militant unions to the early and late stages of the round. Second, some bargaining units were fragmented to sub-agency level, particularly in market-sensitive areas. This paper examines these two strategies, by locating them in a political context, exploring their internal tensions and evaluating union responses.

Fairbrother (1998) has contrasted two approaches to the reconstitution of public sector employment relations: neo-liberal market-oriented reforms of the UK type, and a labourist participative model such as applied in Australia before 1996. The current ACT public sector bargaining round, however, appears to illustrate a third approach: one that is market oriented and participative, but not labourist. This approach is based on two models of participation promoted in the WRA.

First, the principle object of the WRA includes the fostering of 'a more direct relationship between employers and employees with a much reduced role for third party intervention'. The parties are free to 'choose' non-union, union or individual methods of agreement-making (WRA s.3 (b), (c); Reith

1996a, 1996b). The Act assumes a consensus between employer and employees concerning the type of agreement it is most appropriate to adopt. This may be an agreement with a union under s.170LJ of the WRA, an agreement with a group of employees and possibly also with a union under s.170LK, or individual Australian workplace agreements. The WRA provides that union officials may be required to give 24 hours' notice before coming to hold discussions with staff, in meal breaks only, without obstructing normal work operations. If 'participation' is defined in terms of management staff consultation occurring in work time, it is hard to see how union officials can be involved (WRA s.285A–E).

Second, the WRA allows an agreement to cover either a single business or part of a single business (WRA s.170LI).<sup>1</sup> The WRA does not give employees or unions any explicit right to participate in defining the scale of the bargaining unit: this is largely determined by management.

This paper will explore the extent to which these provisions gave control of bargaining processes and outcomes to government, its policy agencies and key strategists. The paper will document the success of unions in remaining relevant to the bargaining process, and the costs to them of the principle of sub-agency fragmentation. The evidence on which this paper is based is derived mainly from semi-structured interviews, conducted from May 1999 to March 2000 with 23 significant players in the bargaining round.<sup>2</sup> This paper juxtaposes their differing viewpoints, in order to identify dilemmas and contradictions requiring further analysis. This evidence has been checked against policy documents and draft and final agreements, and a draft paper was circulated to informants for comment. Because the ACT is small it has been necessary to protect confidentiality: in some cases, not even the relevant agency or role is identified.<sup>3</sup>

## Background

The ACT, the traditional land of the Ngunnawal people, has a population of 313,000. Canberra is the seat of national government and public administration, and 42 percent of ACT workers are employed in the public sector. The focus of this paper is on the 19,000 of these public sector workers who work for the ACT government. The ACT Public Service (ACTPS) separated from

the Australian Public Service (APS) after the passage of the ACT Public Sector Management Act 1994. This Act covers public servants in the Chief Minister's Department (CMD) and five other departments: Treasury and Infrastructure, Education and Community Services (DECS), Health and Community Care, Justice and Community Safety (JACS), and Urban Services (DUS). These agencies are responsible not only for their own staff but for the conditions and activities of other public sector workers, such as teachers, nurses and essential services workers. Such workers are employed under the ACT Public Sector Management Act 1994 and funded by ACT budgets, directly or through external purchaser-provider or service provider arrangements. In a third category are public sector workers employed in independent statutory authorities and in 'off-budget' agencies, such as those governed by the Territory Owned Corporations Act. They include employees of the utility ACT Electricity and Water (ACTEW) and the building and cleaning contractor Totalcare. Approximately 16,000 ACT public sector workers are employed under the ACT Public Sector Management Act 1994. The Community and Public Sector Union (CPSU) has coverage of around 6,000, of whom just under half are members, concentrated in government departments but also located in administrative positions in schools, hospitals and territory-owned corporations (Interviews, CMD, 12/6/99; CPSU, 18/6/99, 18/2/00).

The CMD provides policy advice to the government; and coordinates the implementation of policies, particularly those relating to public sector reform and business development. In the current bargaining round, CMD promulgated guidelines for other agencies' agreements, and played a key role in monitoring the compliance of draft agreements with policy, budgetary and legislative requirements.

Describing itself as organised as a 'federation of business-like entities' employing 3,000 people, the DUS has a range of sub-agencies interchanging services internally, or providing services to other agencies or businesses or the public (DUS 2000). Most of the 800 DUS employees who work for ACTION buses are covered by the Transport Workers' Union (TWU). The most fragmented approach to agreement making was in DUS, where 15 sub-agency agreements were reached. This approach

had been pioneered in the previous round with three City Services agreements.<sup>4</sup>

The Department of Health and Community Care has a purchaser–provider relationship with agencies such as the Canberra Hospital, Calvary Hospital and ACT Community Care. The Canberra Institute of Technology has a ‘service provider’ relationship to DECS, and the term ‘user charges’ is applied to the funding it receives from DECS. The 4,800 teachers and 1,750 nurses are covered respectively by the ACT branches of the Australian Nursing Federation (ANF) and the Australian Education Union (AEU). JACS has sub-agencies covering diverse activities ranging from parliamentary counsel to emergency services. Among the latter, ambulance drivers are covered by the TWU, while the 300 members of the Fire Brigade are all members of the United Firefighters Union. The study of bargaining in territory-owned corporations focused on the 880-strong ACTEW workforce, which is covered by eight unions, the largest being the Communications Electrical and Plumbing Union (CEPU).

ACT public sector industrial relations is located within the federal jurisdiction, so that APS employees are direct and immediate comparators. Employees, especially in teaching and nursing, tend to compare themselves with New South Wales colleagues.

## Context

The present Chief Minister, Kate Carnell, led the Third Legislative Assembly from February 1995 to February 1998, and was re-elected to the Fourth Assembly in February 1998. In 1995, she was embroiled in a turbulent eight months of public sector enterprise bargaining, conducted under the Industrial Relations Reform Act 1993. The union campaign, centrally coordinated by the ACT Trades and Labor Council, escalated to an angry blockade of the Legislative Assembly led by TWU members in ACTION buses. The outcome, a set of agency framework agreements with separate union schedules, provided a 10.1 percent wages outcome over three years, and was seen by managers as insufficiently addressing local issues (Rayner 1998; Crofts 1999:3; Interview, ACTEW Corporation, 17/2/00). As well, separate agreements covered teachers, nurses, emergency service workers and territory-owned corpor-

ations. The expiry date of most of these agreements was around September 1998, with teachers’ agreements expiring 10 months later.

Thus in early 1998, the new ACT government found itself in the six-month lead-up period to a new public sector bargaining round. The Chief Minister began her second term by vigorously supporting private sector employment growth, particularly in the knowledge economy. Along with business development, her second main priority was public sector reform, with a focus on contest-ability. Although ACT public sector employment had actually grown marginally in the Chief Minister’s first term (Australian Bureau of Statistics 1998), job security now became a major union preoccupation.

Public sector reform was based on service-level agreements, resulting in the pursuit of budgetary and performance goals through the development of networks of internal and external purchaser–provider arrangements in key agencies. For example, in 1999 the Chief Minister ‘purchased’ from her department a range of whole-of government and department-specific items, including the production of 50 ‘EBA/AWA proposals’. This is a high number of agreements for a small public sector. It reflects the fragmentation of bargaining to sub-agency level, in agencies where internal business units had been established (CMD 1999b).

## Agendas, Strategies, Policies

In the six months from February 1998, unions were unable to engage managers in the customary pre-expiry discussions, which they had wished to open with an ambit salary claim of 18 per cent over three years (Interviews: union official, consultant, 18/6/00, 28/2/00; communication, CMD, 14/7/00). The Chief Minister, keen to avoid the problems of 1995, was still developing an industrial relations strategy. She used the expertise of an advisory panel of consultants who included a former New South Wales Labor senator and three former union industrial officers (Interviews: manager, consultant, unionists 27/5/99, 18/6/99, 15/2/00, 18/2/00, 28/2/00). These consultants subsequently formed a panel available to support sub-agency managers engaged in bargaining.

While government policy was that all types of agreement should be used where appropriate, interview evidence suggests that initially the

1998 CMD chief executive, who hailed from Victoria, actively promoted staff agreements and Australian workplace agreements. The more industrially experienced DUS managers and consultants were not in favour of 'AAWAs all over the place' (Interview: consultant 28/2/00). Rather, they saw them as best used selectively, as agents of cultural change when middle management needed to be aligned with the new market orientation.<sup>5</sup>

It is important to differentiate this informal initiation of industrial strategy from the CMD's formal policy role. The CMD issued a statement of 'Essential Values, Practices and Terms and Conditions of Employment', which encapsulated government policy in a list of 17 service-wide 'core issues' that might be pursued in agency agreement making (CMD 1998). Included in the list was a provision allowing agencies to apply the involuntary redundancy provisions of the Redeployment and Retirement (Redundancy) Award 1987 without union agreement. Agencies were also invited to renegotiate tenure by revising the concept of 'office', and by reviewing limits on part-time, temporary and contract staff. Items relating to efficiency included full application of the WRA termination provisions, acceptance of performance management agreements, streamlining of merit selection/progression procedures, and agency-level grievance/inefficiency appeal mechanisms. Measures for managing wage restraint included a whole-of-government approach to salary packaging, local determination of other allowances, the linking of agency pay rises to reduced workers' compensation claims, and a range of flexibility trade-offs.

In its policy role of overseeing 50 agreements, the CMD had to respect the obligations of the agency CEOs to meet their own ministers' requirements for agreements (Interview: senior executive 12/6/99). The CMD's formal policy was that agencies had a free choice between union-negotiated and staff agreements, and that AAWAs be provided at individuals' 'request' (Interviews: CMD 12/6/99, 23/3/00; communication 14/7/00).

The decentralisation of bargaining to sub-agency level was more than an issue of choice of agreement-making mode: it was a substantive element in an agenda of structural and cultural change. Informants suggest four possible strategic reasons for selective decentralisation.

The first was that in areas earmarked for possible sale, such as DUS Parking Operations, separate agreements would contribute to their establishment of self-contained transmissible businesses. Second, if business units leaders were to manage their staffing numbers and performance levels, they must be given freedom to move to involuntary redundancy procedures. Third, the streamlining of disciplinary, grievance and under-performance was seen as important to competitive efficiency. Fourth, devolved bargaining was seen as allowing sub-agency managers to avoid the need for involuntary terminations, by keeping local wages low and managing performance competitively (Interviews: DUS, CMD, consultant 27/5/99, 23/2/00, 28/2/00).

### Structures and Processes

The current bargaining round has been much more protracted than in 1995. In the two earliest settlements, struck with largely blue-collar unionised workforces in January 1999, the outcomes for employees were modest. The Totalcare agreement appears to have been an interim measure, designed to secure a 2 percent pay increase from October 1998 and National Wage Case flow-ons while further productivity-based adjustments were negotiated (AIRC 1999a). The agreement with ACTION bus employees was a coup for the government, eliminating the possibility of 1995-style industrial action and setting the standard of wage moderation for the round (AIRC 1999b). ACTION drivers, maintenance and office staff accepted a 1.5 percent pay rise in each of January 1999 and January 2000, and the possibility of a further adjustment from January 2002 in exchange for finding \$10 million savings. They did so in order to protect jobs and prevent privatisation.

Experiments with non-union agreements belonged to the first year of negotiation. In the CMD, non-union bargaining was initially preferred as an option for securing staff participation on an informal and inclusive basis: 'basically it was about getting back to management and staff talking about issues, rather than having it bargained' (Interview: CMD 23/2/00). There was also some attempt in the CMD to promote AAWAs, particularly after the initial defeat of the staff agreement. In late 1998, the CMD set up extensive staff

consultation processes, with a focus on 'lifestyle' issues such as work/family flexibilities. The CPSU gained an Industrial Relations Commission order that management talk to the union, but this resulted in weekly discussions separate from the staff consultation process. The ensuing right of entry dispute culminated in management's seeking the removal of a union barbecue from the building's environs (Junor 2000). Explanations for the staff's 'No' vote range from concern, even by non-union members, at such union exclusion to staff reaction against senior management's failure to allow a free choice of agreement mode.

A ballot for a draft staff agreement in ACT Housing occurred slightly after this. Both 'LK' drafts offered small pay increases and gave access to involuntary redundancy, but in addition the Housing draft contained provision for summary dismissal. This, together with higher union density and a greater spread of non-managerial staff, were given as explanations for the defeat of the Housing staff agreement. The CMD management is reported to have made one last attempt at a s.170LK agreement, by subsequently inviting the CPSU to participate in the joint development of a staff agreement, as provided for under this section of the WRA. When the union refused, CMD management finally accepted a s.70LJ agreement with the union in September 1999, a year after the previous agreement expired.

Among provider agencies in the Health portfolio, the single bargaining unit of the previous round was split four ways. In this well-unionised work environment, management adopted a surprising approach to the participation question, both at the Canberra Hospital and in Community Care, by drafting 'LJ' agreements with a union that had nominal but not substantial coverage of all employees. These draft agreements were again voted down, but the need to run a joint union 'No' campaign proved a real distraction from wage bargaining for the ANF (Interview: ANF 18/2/00). For much of 1999, other agencies moved slowly, although some experimented with agreements that were initially rejected at a ballot or that did not pass CMD scrutiny. In mid-1999, the Department of Health and Community Care experienced rejection of a union agreement that offered no offsets but no pay rise (Interview, 28/5/99). The one successful non-union agreement was at Calvary Hospital.

The Chief Minister issued a press release on 26 August 1998 allowing agencies to continue to negotiate clauses requiring union agreement to involuntary redundancy (communication from CMD 14/7/00). In ACT Housing, after the defeat of the staff agreement, management and the CPSU hammered out compromise 'career transition' clauses, which were first used in the CMD and DUS corporate agreements in 1999. These removed union protection from employees who were demonstrably not cooperating in redeployment initiatives (Interviews: 18/6/00, 28/2/00). In September 1999, once 'career transition', under-performance and disciplinary issues had been resolved, the CMD gained ratification of its own agreement (AIRC1999c) and a rather similar DUS corporate agreement was ratified in December 1999 (AIRC 1999d).

These agreements initiated a second phase of the bargaining round. The 'Essential Values' document was effectively replaced as a blueprint by the CMD agreement, which became a template for other agreements. The pace of sub-agency agreement making escalated in the first half of 2000. A final total of 13 to 15 agreements is expected in the DUS. It appears that there will be six agreements within JACS (communication from CMD 14/7/00). The going rate increased from 5 to 6 percent, as 'photocopy' agreements emerged, containing standard redundancy clauses, slightly different disciplinary provisions and a common expiry date of September 2002.

Outside the 'core' public service, results varied. Community care workers failed to secure any increase, nurses secured a mere 2.3 percent over two years, and those like firefighters who refused to fall behind interstate comparators, were still bargaining almost two years after their previous agreement had expired. Only doctors and teachers broke through to 11.6–12 percent, in mid-2000, after a budget surplus had been foreshadowed.

A more traditional model of participative bargaining occurred in the ACTEW Corporation. Here, budgetary and policy parameters were looser than those in agencies operating under the Public Sector Management Act. In the context of award simplification, management sought a working document, setting out an 'ACTEWfied' version of the generic award and agreement conditions inherited from 1995. Joint committees of

management and delegates from eight unions worked on sections of this document. Negotiations at sub-agency level over relevant details were brought back to these joint committees. Even in the ACTEW the process was somewhat slow, with roster changes resisted by unionists in one area. The CEPU persuaded members to accept the roster changes, and joint management–union ‘roadshows’ promoted the unified agreement to members. Certified in August 1999, it contained an 11 percent pay increase over three years, together with salary sacrifice, income maintenance and acceptance of involuntary redundancy after a retention period. Traditional joint committees were set up to oversee implementation of the agreement (ACTEW Corporation Limited 1999; Interview: ACTEW Corporation, 17/2/00).

### Strategic Dilemmas

As the protracted nature of the bargaining round suggests, models of unmediated and decentralised participation presented strategic dilemmas to both management and unions. First, informal employer–employee discussions tended not to produce technically acceptable draft agreements, but the centralised vetting in the CMD resulted in bottlenecks and some distrust at agency and sub-agency level. Second, the informality of staff discussions over management-initiated draft agreements meant that employees’ only real power lay in the passive individual choice of a ‘No’ vote in a secret ballot. Third, whether in union, non-union or devolved bargaining, employees were reluctant to participate in the search for efficiencies where these were equated with job losses.

Both informal and decentralised bargaining structures stretched management resources as well as those of unions. In the DUS, where 15 sub-agencies were bargaining, a panel of consultants was available to support local managers (Interviews: CMD 23/2/00; consultant 28/2/00). To extend the sub-agency bargaining model, either new levels of industrial relations expertise would have to be developed amongst frontline managers, or the CMD would have to spend more time vetting draft agreements, or the agreement-making process would have to become less technical. The first option would require prohibitive training costs, the second would require additional staffing or continued

bottlenecks, and the third arguably underestimated the legal complexity of industrial instruments.

While line managers had no authority to negotiate on superannuation, workers’ compensation, leave and other items implicated in flexibility negotiations, the CMD was refraining from directly influencing agency bargaining structures or agendas. Yet in the agencies, negotiators without a technical industrial relations background were reportedly ‘quite terrified of committing to anything in any public way without checking with Chief Minister’s first’. Several union organisers reported conducting extensive membership consultations on what they thought was an agreed draft, only to find it unrecognisably changed on its return after the months required to progress it through the CMD backlog. A consultant commented that negotiators ‘out there trading punches with the union’ did not appreciate having hard-won clauses rejected centrally on apparently trivial grounds (Interviews: CPSU 18/6/99, 15/2/00, 18/2/00; AEU 10/6/99, 15/10/99; ANF 18/2/00). As a result one activist described the bargaining round ‘as the most deceitful, disappointing process’ (Interview: 22/2/00).

Management did not set out to deceive. Senior managers and consultants argued that, ethics aside, deceit is a bad bargaining tactic (Interviews: CMD 23/2/00; consultant 28/2/00). Unions agreed that ‘the managers in CMD ... were generally trying to do the right thing ... They really wanted the staff involved who’d never been involved in union things before’ (Interview: CPSU 18/6/99). Ironically, employee distrust was generated by the informal and direct participation that had been intended to create transparency.

On the other hand, in the second half of the round, once the template agreement had been struck, fragmented agreement making escalated. By February 2000, the CPSU appeared to have some reason to complain of the ‘farical process’ of bargaining ‘essentially the same agreement’ 32 times (Interview: CPSU, 18/2/00). None of this alters the significance of the very existence of 50 agreements as a substantive outcome, regardless of similarities or differences in their content.

Even union–management agreements presented unions with some dilemmas of participation. This was despite the encouragement unions received from the fact that ACT

public sector workers voted down virtually all non-union staff agreements. Nevertheless, unions found themselves having to address management's claim that an inclusive approach to consultation over draft agreements required the participation of the 50 percent of employees who, on average across the ACT public sector, were not union members. Union resources were over-stretched by the fragmentation of bargaining structures across 50 agencies and sub-agencies. The crucial role of workplace delegate networks in devolved structures tended, paradoxically, to restrict union agendas, limiting them to defensive and localised strategies which neither pre-empted nor transcended the government's parameters.

Both unions and consultants saw the decentralisation of agreement-making units as a strategy designed to 'put pressure on the unions, to test whether the unions could actually cope and survive with numerous agreements' (Interviews: 15/2/00, 18/2/00, 28/2/00). Underlying the various participative experiments was a management argument that the codification of employee rights generated workplace rigidities (ACT Government 1999). The attempt to informalise some ACT agency agreements, which occurred during the award simplification period, made it hard for unions to roll as many award protections as possible into workplace agreements, as workers were doing elsewhere.

## Conclusion

At a whole-of-government level, management won procedural victories in controlling the timing and sequencing of agreement making. Privatisation threats were used to bring the TWU to the table at an early stage in the round (Interview: 7/3/00). A consultant commented: 'If they didn't get the TWU out of the dispute, the Government would have lost the round' (Interview: 28/2/00). Unions took the initiative in seeking to open the agreement making round and to keep bargaining on track. Nevertheless their strategies were necessarily defensive, in that their main objectives were to save jobs or to prevent privatisation. They were also necessarily reactive, in that management controlled the timing of bargaining. Unions found themselves expending energy and resources in persuading managements to engage. They then expended further energy keeping track of, and responding to, the range

of local small-scale agreements being offered to their members. Finally, they spent further time and resources in progressing agreements through delays and uncertainties over who had authority, locally or centrally, to consider union initiatives or counter-proposals.

Overall, unions won the battle to remain relevant, but lost ground in the war of fragmentation. The voting down of non-union agreements represents a rejection, even by non-union members, of management attempts at union exclusion. On the other hand, the extent to which those who voted for staff agreements subsequently accepted individual AWAs is only now starting to emerge (Interview: CPSU 15/2/00). Moreover, de-collectivisation can occur without non-union agreements or individualised agreement making. Compartmentalised sub-agency bargaining may be enough to undermine employee solidarity, as members of one business unit see the bargaining difficulties of colleagues in another unit and think, 'that's got nothing to do with us' (Interview: 18/6/00). Unions deplored their own inward-turning, but argued that competition policy had forced them to be selfish in getting the best possible deal for their own members. Government could thus 'pick off major players' (Interview: TWU 7/3/00).

Management achieved a substantive victory in keeping most public service wage increases down to 5–6 percent over three years. More significantly, the dispersal of wage outcomes between community health workers and nurses at one end of the spectrum and hospital doctors at the other, and between teaching and clerical/administrative staff, has resulted in bitterness and soul-searching among unionists. It has also meant that whatever goodwill the government hoped to win through participation has been lost.

The CPSU achieved a common finishing date for many agreements: this confers the capacity for some return to combined action. To extend this to inter-union solidarity will, however, be difficult. Necessarily, in the climate of 1998, unions were strategically reactive and substantively defensive. Even the participative delegates' structures networks that were so important a source of union strength were inward-looking and defensive. The challenge of a wider regrouping is a difficult one. In under-staffed areas like nursing, delegates are hard-pressed even to attend their own workplace meetings (Interview: 18/2/00). Management

achieved more through fragmentation than through its efforts at informality and transparency. Out of the 1998–2000 round, unions gained a breathing space in a war of attrition. It remains to be seen whether they can seize the initiative for the next round through approaches that are genuinely participative and collective.

## Notes

1. 'Part of a single business unit' agreements were possible under the Industrial Relations Act 1988, but were used in only two or three cases in the previous ACT round.
2. The research was funded by a University of Canberra Research Grant.
3. On several days two interviews were conducted, so the mere use of dates as an identification provides a further level of anonymity.
4. Yarralumla Nursery, Cityscape and Waste Management.
5. During 1998–2000 there was some movement of CEOs and senior managers between the CMD and DUS.

## Interviews

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- Belinda Beattie of the University of New England, to assist in her project on comparing the extent of NPM (New Public Management) reforms in the Metropolitan and Rural Area Health Services of New South Wales.
- Russell Ayers of the University of Canberra, to assist in a program of interviews on policy markets in Australia. (The applicant had to decline an earlier award because of sickness.)

A third application is still under consideration.