



A•S•U
Australian Services Union

ASU Submission

Increasing the integrity of the Commonwealth procurement process

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1. Introduction

The Australian Services Union (ASU) is one of Australia's largest Unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Current ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Social and community services
- Local government
- State government
- Australian Tax Office
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and SA)

The ASU has members in every State and Territory of Australia, as well as in most regional centres as well.

2. Who we represent

The ASU has members in both in house call centres and call centres companies which perform "contract" call centre functions for other companies. The ASU also has members in private sector – clerical and administrative work in a variety of companies including private legal firms as well as IT professionals in companies like Qantas and IBM.

3. The Review

The ASU welcomes the opportunity to participate in the review aimed at increasing the integrity of the Commonwealth procurement process. Government procurement presents an opportunity and direct policy lever with which the government can influence the employment practices of call centres, ICT contractors and other suppliers in the services industry. The Australian Government should use their significant purchasing power to ensure those contracted to supply services to the Australian Government have decent employment practices and keep their operations onshore.

The federal government expends billions of dollars every year on the acquisition of goods and services. The ASU believes the Commonwealth needs to be mindful of, and committed to, the need to ensure that their expenditure of taxpayers' money encourages the creation and retention of good jobs within Australia.

Our campaign "Secure Jobs Secure Data" focusses on the crisis facing professional services workers whose jobs are being offshored at an alarming rate. The campaign is also concerned about the offshoring of Australian's sensitive personal data which follows the jobs going offshore, and how this affects our privacy and security.

4. Keep Australian Services Sector jobs onshore

Government procurement has changed rapidly and continues to do so. Today, the procurement life cycle spans sourcing strategy, supplier selection, contract management, supplier relationship management, and purchasing and supplier integration.

Procurement is now seen as one of the top value creators in any business or government agency, and fundamental to government service delivery.

The ASU acknowledges the importance of an effective procurement policy but maintains keeping Australian services sector jobs onshore is vital to Australia's ability to stay afloat as a modern economy. Below are six important strategies our Service Sector should implement:

1. **Develop a Services Sector Industry plan**

Developing a white collar services sector plan that focuses on areas including; future job needs, skills and training, domestic and regional growth opportunities, leveraging new technologies, infrastructure development to support industry development and investment potential.

2. **Review tax incentives and disincentives to retain Australian jobs and competitiveness**

Building of tax incentives designed to retain jobs in Australia as these jobs will contribute to the ongoing development of Australian competencies and competitive advantage. These incentives must be aimed at creating a more favourable tax treatment for income earned in Australia compared to income earned from offshoring work that was/could be undertaken in Australia.

3. **Introduce "Right to Know" legislation – consumer consent and privacy**

Free Trade Agreements that amount to little more than political treaties that achieve diplomatic purposes but do not advance Australia's trade position should be immediately re-examined. Future agreements must be negotiated on the basis of real benefit to Australia generally and specifically for those parts of the economy regarded as Australia's core competencies.

4. **Free trade agreements need to benefit Australians**

Given that services often involve the passing of information and data on individuals, Australia should introduce 'country of origin' legislation for services to match similar requirements for manufactured goods. This will involve the development of a framework to:

- ensure that consumers, businesses and government have transparency as to where services are provided from.
- allow consumers to make decisions about where their data is stored.

Government will lead the way in ensuring the private, personal, financial and health records of its citizens that it maintains is kept secure onshore and protected in accordance with Australian laws.

5. **Government procurement policy needs to focus on supply chains, Australian providers**

As a major purchaser of goods and services, Government policy will ensure through its own procurement arrangements to only contract companies to provide goods and services to and for the government that:

- have transparent supply chains
- onshore its labour needs and forego off shoring
- have a track record of ethical employment practices.

6. Local spending means local jobs

Governments should use their purchasing power to generate better jobs and conditions for all Australians including:

- Commonwealth procurement in the IT sector should include as one of its goals the transference of knowledge and capability to the public sector
- establish a single centralised office for the oversight of all contracts for goods and services
- set requirements on the use of labour hire
- consider companies' occupational health and safety and secure employment record when evaluating tendering for government contracts
- Commonwealth procurement of services should not be allowed to undercut the salaries or conditions of employment of public sector employees
- Work with state and territory governments through the COAG process to ensure the data security of all Australians, including through tendering processes to ensure that companies tendering for work have the highest data security standards through on-shore facilities.
- establish a Services and Financial Sectors Procurement Register of suppliers from which the Government will source its services and financial sector purchase.

5. Victorian inquiry into the Labour Hire Industry and Insecure Work

In November 2015 our Victorian Private Sector Branch made a submission to the Victorian inquiry into the Labour Hire Industry and Insecure Work (see Attachment A). Our Branch urged the State Government to ensure government procurement arrangements promote ethical and secure employment through government grants and tenders being given to businesses and organisations that demonstrate a commitment to secure, sustainable and local jobs.

6. Conclusion

Government procurement has the potential to become a powerful tool for increasing the quantity and quality of employment in key parts of the services sector. Our community pays taxes to government on the basis that these taxes are used to preserve and improve our collective quality of life. It is therefore legitimate to expect that when government spends our money via public procurement it is used partly to help enhance the quantity and quality of jobs in Australia.

At the very least, government should be leading the way with a responsible procurement policy.

7. Recommendations

It is proposed that the following legislative measures be enacted:

Preference in Contracting

1. That the Government require agencies bidding for government contracts through a tender process or providing quotes to government for other procurement to disclose where the relevant work will be performed.
2. That preference be given to bidders who will perform the work in Australia.

Ethical Procurement in the Service Sector

1. That Government is committed to using its purchasing power to ensure that workplaces in the service sector contracted to perform work for the Commonwealth are ethical, fair and safe.
2. That Government procurement decisions are based on ethical as well as value for money considerations.
3. That Government has a responsibility to lead by example. This means that Government should not be associated with the purchase of services produced from the labour of exploited workers.
4. That only companies who comply with relevant legislation including the Fair Work Act and workers compensation legislation, awards and collective agreements will be considered for government contracts.



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ASU Supplementary Submission

Increasing the integrity of the Commonwealth procurement process

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1. About this submission

This is the Australian Services Union (ASU) supplementary submission to the current review aimed at increasing the integrity of the Commonwealth procurement process.

2. Procurement in the disability, community and social services sector

Social and community services have historically been at the forefront of responding to social issues of the day and providing opportunities for individual and families to participate in and shape their community.

In its earlier years the role of government was primarily built around the development of infrastructure and industry, and not the delivery of human services. This led to the organic development of community organisations providing community and welfare services with the Commonwealth and State governments funding these organisations. Community services have often been the instigator and innovator for many community service delivery models.

The not-for-profit (NFP) social and community sector is important for its economic contribution, for its growing public value in implementing government programs and delivering government services, and for its enormous role, extending far beyond the public funding that it receives, in creating a fairer and more civil society.

Most NFPs are small to medium sized organisations generally with less than 100 employees. They provide crucial and unique services, developed out of close interagency collaboration, long and deep connections to their communities and a wealth of experience in service delivery. By working collaboratively Not-For-Profits are able to draw on community strengths and bring together government, private and philanthropic resources to solve what are often complex problems that are unable to be solved by one organisation, program or intervention alone.

The potential benefits of NFPs delivering human services is well recognised by governments. A survey of government agencies by the Productivity Commission found that the top four motivations for engaging NFPs in the delivery of human services were that NFPs:

- provide flexibility in service delivery
- are better able to package the service with other services for the target client group
- give value for money
- are representative of the clients the program is targeting.

3. Quality of services is paramount

In relation to procurement of human services, a major concern of the ASU is the marketisation of human services delivery, which refocuses organisations on budget “efficiency”, with a quest for budgetary savings, often overshadowing the commitment of the organisation to quality of service delivery.

We are concerned that profit motives and cost reduction will inevitably lead to the erosion of the quality services that are provided to clients in need. In a bid to win tenders, organisations may underestimate the true cost of service provision. This means poor quality services for clients and communities, and increased workloads for staff where the service is successful in winning a contract but without the necessary funds for human and other resources that are needed to deliver a quality service.

Through individualised funding models service providers learn quickly that in order to attract clients and therefore government funding, they must offer the cheapest product. Inevitably this means they employ lower skilled (and therefore lower paid) workers, who will have less time to spend on each client, and have bigger workloads.

Large for-profit organisations can more easily thrive in an individual funding environment. They have the advertising budgets and economies of scale to market their service to users.

4. Community connected and responsive

The not-for-profit social and community services sector brings a history of knowledge, expertise and lessons learnt from the long term commitment to an issue, client group or local community. They have their own history, values and identity, and this is often tied to the local community.

NFPs have the capacity to not only be closely connected with their local community but to also understand the needs and be flexible in meeting those needs in a responsive and timely manner.

Larger organisations may also value these things but can easily become 'bureaucratised' and in turn become less connected with local communities. A market driven by competition, contestability and user choice will bring standardised policies and systems that may cause larger organisations to become less flexible and responsive to their clients' needs. In addition there is a risk of trust being lost when a for-profit provider is not experienced in local issues.

Over the years many NFP community services have been responsive and adaptive to unrecognised needs resulting from market or government failure. This is because they often provide services which may be too politically sensitive for governments to directly offer - for example, assistance for asylum seekers, needle injecting centres and support services to sexual health workers.

They also offer specific services and initiatives for those in our community that may face extensive vulnerabilities - for example, CALD, indigenous and the LGBTIQ communities. Local community based organisations are able to give voice to the needs of these communities as well as creating opportunities to invest back into the organisation.

5. Competitive tendering

The last decade saw governments move to use competitive tendering approaches in the social and community services sector. The idea behind competitive tendering is that it forces organisations to compete against each other in a competition to determine which one is able to provide a particular service for the lowest price for government.

Competitive tendering does not work in the social and community services sector, for the following reasons:

It is inefficient and expensive:

Services are often required to outlay capital to hire specialist tender writers. This is a significant barrier for smaller locally based and run social and community services. There are also significant costs incurred by government in the development of tender processes, most of which goes directly to the private sector.

It does not promote diversity of service provision or competition:

Evidence shows that where competitive tendering has been used, the result is overwhelmingly the consolidation of service providers. Smaller local social and community organisations are cut out of funding opportunities and their local knowledge and experience in supporting vulnerable people, built up over decades, is lost.

The community services sector operates in a fixed labour cost environment:

The community sector is unique in that the overwhelming majority of community organisations pay the minimum Award rates of pay, including those on enterprise agreements where they exist. This is partly because of the landmark ASU Equal Pay Campaign that saw Award wages increase between 23 – 45 % over 2012 to 2020. This means that efficiencies can only be derived from reductions in quality of service, skills of staff or working conditions and security.

It does not foster innovation:

A competitive funding environment means services are likely to be less willing to work together sharing data, information and outcomes. Competitive tendering also disincentivises experimenting with new approaches, particularly if those things do not easily match up with the criteria and metrics used to allocate funding.

6. The increasing role of for-profit enterprises in the sector

A market driven environment will likely create a lucrative market for private providers, with a business model geared around their priority to turn a profit for their shareholders.

It is a gross misuse of public funds for businesses that operate for-profit to be able to obtain taxpayer funding to deliver essential government services for vulnerable, disadvantaged and marginalised people, and to be able to make profit from this work.

The not-for-profit community services sector is purpose driven rather than market driven. There is little impetus for private profit making businesses to invest in many of the areas that community based NFPs have traditionally supported: community development, community strengthening, and research.

7. Impacts on the workforce

Federal and state governments have argued that individual contracts, which are the preferred model of employment of for-profit organisations - put users front and centre and will lead to improvement in quality by providing users with 'choice' about the services they access. However ongoing downward pressure on social and community services sector funding has led to a sector that has a large component of casual workers, or other forms of insecure employment such as short-term contracts. The so-called user choice models of service delivery lead to 'on-demand' workforces employed on insecure and fixed-term employment contracts. This model of funding has directly led to:

- a significant proportion of employees in the sector being engaged on a part-time and/or casual basis;
- a significant proportion of employees being engaged on temporary contracts;
- limited access to paid overtime;
- high turnover of employees leading to very limited access to long service leave;
- low wages meaning limited accumulation of superannuation benefits;
- high levels of unpaid work;
- employees undertaking unpaid training in the employees' own time.

8. National Disability Insurance Scheme

At the heart of the National Disability Insurance Scheme are the objectives of competition and contestability. Whilst the NDIS is still only in its infancy there has already been evidence of a growth of more insecure employment arrangements ranging from web venues that connect clients with self-employed workers - charging a fee to both to the worker and the client for each service 'engagement'- to increasing numbers of providers employing workers through labour hire arrangements or as 'self-employed' contractors, to increasing levels of casualisation among direct employees.

ASU members working under the NDIS are employed under the Social, Community Home Care and Disability Services Industry Award. The Award is currently subject to attack in the Fair Work Commission by employer organisations who wish to reduce minimum engagement of casuals; take away regular and secure hours for part-time workers; increase workers hours without paying penalties; require workers work 24 hours in a client's home but only be paid for 12 hours; and reduce penalty rates applicable to a sleepover.

Employers are also looking to restructure their organisations to create casual and short-term positions because they are worried the NDIS will not deliver enough funds to cover wages and leave entitlements. There is also a move in some organisations to create a "two tiered" workforce with a small number of permanent supervisors and administrators and a large group of casual, hourly paid, disability workers.

In the Victorian NDIS trial sites significant workforce issues were exposed:

"(t)here have already been lots of one hour shifts, lots of travel time. We've got staff working 15 hours to get 8 hours' pay, and they're running their own vehicles."

The low level of pricing of direct care and support work and lack of certainty of demand in the NDIS competitive market, has made it difficult to recruit and retain workers and to provide the same level of training and supervision as prior to the NDIS. Some trial sites were found to offer pay and conditions that undercut the award or did not apply with occupational health and safety or other regulatory requirements.

The disability workforce will need to more than double by 2020 to meet the increased demand for services under the NDIS. There needs to be consideration for how the NDIS will attract workers to the sector and how it will retain the current skilled and experienced workforce. An essential element of this is career progression and professional standards. Market mechanisms do not address professional standards and service quality.

9. Social impact bonds

Social Impact Bonds are increasingly being introduced in various state governments and were announced as a major policy initiative in the recent federal budget, particularly in the area of out of home care.

Social impact bonds and social financing are designed to return a profit of 8% -15% to private investors. This amount dedicated to profit is either funding redirected from direct program provision, or an additional cost for service provision.

The ASU is concerned social impact bonds may lead to a bias in service delivery - that programs would target the 'easier' client groups, leaving those with complex issues and needs between the gaps of the service system.

Further, the use of SIBs reduces public funding invested in community services. This is dangerous, as it does not account for potential market downturns, and does not address circumstances where a service is of great social importance, but is not 'popular' or 'attractive' for companies to invest in.

The ASU believes services for those experiencing extreme vulnerabilities in human services are best provided by the NFP sector, with effective prevention programmes the only way to achieve real and sustainable equity of access to quality support for all.

10. Summary

The increasing reliance by governments upon competitive tendering in the social and community services sector has forced organisations in the social and community services sector into a competition to 'win' funding to deliver a service for the lowest price for government. This contested model means that, in order to attract government funding, organisations must offer the cheapest product. Inevitably this means they employ lower skilled (and therefore lower paid) workers, with less time to spend on each client, and bigger workloads.

The introduction of private, for-profit enterprises in the human services sector has redirected organisations from a primary motive to deliver the highest possible standard of service, to the maximisation of profit for its owners and shareholders.

In the procurement of human services, federal and state governments should set an appropriate price floor as a minimum for tenders, which will provide for adequate and safe staffing levels, and fair and reasonable wages and conditions, at least in accordance with the current Award.

11. Recommendations:

1. There should be no further marketisation of the disability, community and social services sector.
2. There should be an end to competitive tendering as a means to allocate funding to the disability, community and social services sector.
3. No private for-profit corporation should have a role in the delivery of disability, community and social services.
4. Future funding in the not-for-profit disability, community and social services sector should be provided on a secure and sustainable basis so that it can continue to deliver international best practice standards of services to vulnerable people and communities.
5. Future government funding in the not-for-profit disability, community and social services sector should be based upon a minimum pricing policy, in which government determines the minimum funding level required for a project to deliver adequate and safe staffing levels, as determined by professional associations, with wages and conditions that are at least in line with the relevant Award.