



Competition Policy Review Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

17 November 2014

Dear Professor Harper

### **Competition Policy Review**

The Community and Public Sector Union (CPSU) PSU Group is an active and progressive union committed to promoting a modern, efficient and responsive public sector delivering quality services and quality jobs. We represent approximately 55,000 members in the Australian Public Service (APS), other areas of Commonwealth Government employment, ACT Public Service, NT Public Service, ABC, SBS and CSIRO. We are the primary union representing employees in the Australian Competition and Consumer Commission (ACCC).

The CPSU made a submission during the first stage of the Competition Policy Review. This second submission goes to the recommendations in the Review's draft report. As the majority union in the Commonwealth public service, this submission is focussed on issues of most concern to our members, specifically addressing possible changes to the ACCC and, the treatment of human services.

### Changes to the ACCC

The Review draft report proposes to move all regulatory functions from the ACCC except consumer competition regulation. These functions would be moved to a new national access and pricing regulator.<sup>1</sup>

CPSU members are concerned about potential changes to the structure of the ACCC. Any changes must be done with full consultation with staff, and any resulting structure must maintain their wages and working conditions. A 'spill and fill' process that would require staff to reapply for their positions in any new entity must be ruled out.

The ACCC has undergone significant restructures in the last 12 months with approximately 111 jobs lost.<sup>2</sup> The result has been unfilled positions and increased workloads. This is concerning given the important role the ACCC plays in ensuring fair trading and protecting consumers. Any new entity must be adequately resourced to carry out this important work.

The CPSU is also concerned about proposed changes to the governance structures of the ACCC. The Review draft suggests replacing the Commission with a Board with executive and

<sup>1</sup> Competition Policy Review, Draft Report, September 2014, pp.62

<sup>2</sup> From 835 non-SES staff in December 2013 to 724 by July 2014. Calculation based on Table 3 in APSC, APS Statistical Bulletin 2013-14 and Table 3 in APSC, snAPShots December 2013

non-executive members.<sup>3</sup> This is despite the Review draft itself noting that the ACCC “*is a well-regarded and effective body*”.<sup>4</sup> It is unclear why such a dramatic change is necessary.

### Treatment of Human Services

The Competition Policy Review's draft report recommends the creation of a human services intergovernmental agreement. It proposes that each jurisdiction would develop an implementation plan based on:

- user choice;
- separation of funding, regulation and service delivery;
- a diversity of providers; and
- innovation in service provision.<sup>5</sup>

The CPSU does not support this recommendation and is concerned that a consequence of the implementation plans could be to transform the role of government from service provider to solely contract manager. Experience suggests that rather than improving human services for users, the recommended intergovernmental agreement will lead to a consolidation of providers in ‘public service markets’ resulting in reduced competition, greater transaction costs, lower quality service provision and the removal of the choice of a public option.

### *Lack of competition*

Separation of funding, regulation and service delivery will not lead to a competitive ‘public service market’ or increase diversity of providers in human services. In practice, as the cost and complexity of the tendering process increases, competition is reduced rather than enhanced and large firms eventually dominate the provision of services.<sup>6</sup>

More specifically, there is a tendency for larger contractors to acquire smaller businesses that have won contracts, consolidation of the market and reduced competition results.<sup>7</sup> The creation of ‘public service markets’ for employment services is a classic example of market consolidation. The first CPSU submission to the Review highlighted that between 1997 and 2009, the number of core employment services providers fell from 306 to 99.<sup>8</sup> A recent ANAO report indicates that it has since decreased further to just 85 providers.<sup>9</sup>

### *Transaction costs*

There can be significant hidden transactions costs associated with managing contracts as opposed to directly providing the services. Hidden costs include:

- administration of the tenders;
- post tender contractual variations; and
- risks remaining with the taxpayer.

The inability to specify every aspect of a service in advance for complex multi-year contracts leads to contracts that allow for future adjustments with fees. The government as purchaser

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<sup>3</sup> Competition Policy Review, Draft Report, September 2014, pp.63

<sup>4</sup> *ibid*, pp.62

<sup>5</sup> *ibid*, pp.26

<sup>6</sup> B. Cook, V. Quirk and W. Mitchell, Report 1 - Report prepared for the Community and Public Sector Union (SPSF Group), ‘Impact on Community Services of Staff and Service Reductions, Privatisation and Outsourcing of Public Services in Australian States’, *Centre for Full Employment and Equity*, University of Newcastle, June 2012, pp.147

<sup>7</sup> National Audit Office, ‘The role of major contractors in the delivery of public services’, 12 November 2013, pp.14,

<sup>8</sup> D. Finn, ‘Job Services Australia: design and implementation lessons for the British context’, *Department of Work and Pensions*, 2011, pp.10

<sup>9</sup> Auditor-General, ‘Management of Services Delivered by Job Services Australia’, *Australian National Audit Office*, 11 June 2014, pp.13

may be at some negotiating disadvantage should the contractor demand an exorbitant price for a necessary variation, particularly if the cost of contract termination is excessive. In this way the cost of a service can significantly rise over the life of a contract. For example, Serco in Western Australia has been accused of massive price gouging on prison transport services, charging \$518,490 over a nine month period in 2013 for 170 additional services above its set baseline monthly fee.<sup>10</sup>

#### *Quality of service provision*

The experience of outsourcing in Australia suggests that the focus can fall solely on the price that government can purchase services rather than on quality of the services provided. The operation of the Job Network provides an example. Between 2003 and 2008, the Commonwealth put tendering organisations including Catholic Social Services Employment under growing pressure to reduce costs while delivering employment outcomes. Fees paid for services remained almost static while inflation and the cost of delivery rose.<sup>11</sup> A 2012 Government review into the Job Network's successor, Job Services Australia, identified uncompetitive wages as a major issue, causing high staff turnover, and consequent reduced service quality for both employers and job seekers.<sup>12</sup>

#### *Removing the choice of a public option*

Contestability in the delivery of human services has been justified on the basis that it encourages a diversity of providers and provides greater choice for users. The result in many instances, however, has been the removal of Government as a provider of services, eliminating the important choice of a public option.

While the CPSU supports introduction of the National Disability Insurance Scheme (NDIS) and believes it is long overdue, it is becoming clear the NDIS is being used to end public sector provision of core disability services. For example, the NSW Government is planning on transferring all disability services to the non-government sector.<sup>13</sup> The NSW Government will not provide any residual specialist disability services, aged-care services or basic community care support when the NDIS is fully implemented across NSW by 30 June 2018.<sup>14</sup>

Similarly, the Commonwealth Government has announced it will cease to provide disability employment services with the proposed outsourcing of the 47 per cent of Disability Employment Services - Disability Management Service that is currently delivered by CRS Australia, a division of DHS.<sup>15</sup> The dismantling of CRS Australia is occurring even though it provides high quality services to clients.<sup>16</sup> According to an ANAO audit, over the period 1 July 2008 to 30 June 2010, 90 per cent of respondents indicated that they were satisfied or very

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<sup>10</sup> AAP, Rapists escape from WA prison blamed on prison van security, *Guardian Australia*, 9 January 2014, <http://www.theguardian.com/world/2014/jan/09/rapists-escape-from-wa-prison-blamed-on-prison-van-security> (accessed October 31)

<sup>11</sup> Fowkes, L., 'Rethinking Australia's employment services', *Whitlam Institute*, Sydney, 2011, pp.7

<sup>12</sup> Department of Employment, Advisory Panel on Employment Services Administration and Accountability – Final Report Feedback, [http://docs.employment.gov.au/system/files/doc/other/advisory\\_panel\\_on\\_employment\\_services\\_administration\\_and\\_accountability\\_final\\_report\\_feedback.pdf](http://docs.employment.gov.au/system/files/doc/other/advisory_panel_on_employment_services_administration_and_accountability_final_report_feedback.pdf), p.7 (accessed 10 November 2014)

<sup>13</sup> Pro Bono News Australia, NSW Moves on Privatising Disability Care, 29 October 2013, <http://www.probonoaustralia.com.au/news/2013/10/nsw-moves-privatising-disability-care> (accessed 10 November 2014)

<sup>14</sup> Ageing, Disability and Home Care. NSW NMA and PSA Questions 18 Feb 2014, 27 February 2014, [http://www.adhc.nsw.gov.au/about\\_us/strategies/national\\_disability\\_insurance\\_scheme/nsw\\_nma\\_and\\_psa\\_questions\\_18\\_february\\_2014](http://www.adhc.nsw.gov.au/about_us/strategies/national_disability_insurance_scheme/nsw_nma_and_psa_questions_18_february_2014) (accessed 10 November 2014)

<sup>15</sup> Mitch Fifield, Release of Disability Employment Services & Disability Management Services Industry Information Paper, 28 May 2014, <http://mitchfifield.dss.gov.au/media-releases/105> (accessed 10 November 2014)

<sup>16</sup> The Auditor-General, Audit Report No.36, Service Delivery in CRS Australia, Australian National Audit Office, 14 April 2011, pp.15

satisfied with the support received from CRS Australia. This choice will no longer be available to users once this work is outsourced.

At its core, contestability is a means to reduce direct government service provision, ending public options and often leading to a declining quality of service for users. It is not in the interest of the community and only reduces user choice.

#### Further information

If the Panel requires further information from the CPSU in relation to the matters raised in this submission please contact Dr Kristin van Barneveld on [kristin.vanbarneveld@cpsu.org.au](mailto:kristin.vanbarneveld@cpsu.org.au) or 0420 316 825.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Persse', with a long, sweeping horizontal line extending to the right.

Louise Persse  
Assistant National Secretary  
Community and Public Sector Union