ACTU Response to the Productivity Commission Inquiry into Human Services: Preliminary Findings Report

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The ACTU is the peak body for Australian unions, made up of 46 affiliated unions. We represent almost 1.6 million working Australians and their families. The ACTU and affiliated unions are active advocates for the vital role of the public and community sectors in the delivery of quality publicly-funded services to the Australian community. The Australian Council of Trade Unions (ACTU) welcomes the opportunity to provide feedback on the preliminary findings of the Commission.

The Preliminary Findings Report released has reinforced the ACTU's concerns about this inquiry and its underlying assumptions. The report dismisses the concerns of a number of organisations about the potential dangers of the introduction of competition, contestability and user choice into human services sectors and has gone on to identify some of the most crucial human service sectors as potential targets for this process. The ACTU reiterates its opposition to the introduction of for-profit competition, contestability and user choice both generally and specifically with reference to the sectors the Commission has identified.

Ample evidence has already been provided in both the previous ACTU submission, and in those of unions and other organisations, of these principles being applied to public or community sectors which have resulted in poor outcomes for workers, service users and the Australian community. As our previous submission stated, this can be attributed to the actions of for-profit providers who have minimal interest in providing high quality services to the Australian public and whose overriding goal is the attainment of profit. The Preliminary Findings Report has largely ignored these concerns, claiming that it is possible for all negative impacts to be effectively removed through 'designing appropriate systems to provide human services'.

Government 'stewardship' of privatised sectors, achieved through initial system design and ongoing regulation, is a regular refrain within the report and is put forward as a solution to all of the myriad ills created by exposing public and community sectors to for-profit market principles. The ACTU rejects this assertion. Previous government attempts to provide 'stewardship' have largely failed and have brought into question the ability of the government to adequately regulate the actions of for-profit providers, particularly when services to vulnerable people are concerned. The first section of this submission will focus on this point, showing that relying on government stewardship and design of systems to protect vulnerable Australians from the predations of market forces is at best hopeless optimism and at worst a deliberate abandonment of government's role to provide quality and effective services.

We will then provide a short analysis of each of the sectors identified specifically for the application of market-based reforms by the Commission, responding directly to the assertions about each sector and attempting to show why any application of market principles to these sectors is likely to result in negative outcomes for workers, service users and the community – using past and international examples where they are available.

GOVERNMENT STEWARDSHIP – THE ILLUSION OF CONTROL

Initial service design and ongoing government 'stewardship' of newly marketised sectors formed the primary explanation in the Preliminary Findings Report for why the concerns of a large number of organisations about the impact of market principles on human services sectors can be dismissed. Stewardship is, in the report, defined as "encompass[ing] almost every aspect of system design, including identifying policy priorities and intended outcomes, designing models of service provision, and ensuring that services meet standards of quality, accessibility and suitability for users."[1] The reliance on the government fulfilling this role to ameliorate the negative impacts which inevitably, as discussed in our previous submission, accompany for-profit market reforms is as hard to oppose in principle as it is easy to question in reality. Firstly, it represents a fundamental unwillingness to consider the obvious solution to any perceived issues within public or community sector human services. If there are issues with these sectors, or areas in which they could improve, improving the current service delivery model is surely a more logical first step than is opening up the sectors to the market and relying on government, which is accused of being unable to deliver services effectively in this area, to deliver stewardship. There is no evidence that private companies are more efficient or effective service providers than public or community sector organisations. The immediate suggestion of marketisation, rather than internal reform, as a response to any perceived issues exposes faulty reasoning on the part of the Commission. Even putting this aside, previous experience both in Australia and overseas has shown that effective government service design and stewardship are more often hoped-for than they are realised. Government attempts to design and regulate marketised sectors have, historically, taken one of two paths into inefficacy.

Path one – institutional impotence

The first, and arguably most common, path to inefficacy taken by government stewardship is that of steadily increased impotence. The primary cause of this process, a concept called 'vendor dependency', was covered briefly in the previous ACTU submission. Vendor dependency arises when the bargaining power in a contract shifts toward the contractor. Over time, as the contract matures, it is common for the government department to lose the internal skills and knowledge it needs to effectively monitor, check and evaluate the activities of the contracted service provider.

Vendor dependency is not a natural or accidental by-product of privatisation and outsourcing; it is actively cultivated by vendors. It has become common to under-price bids for government tenders, on the basis that once they are won and the government department becomes reliant on the service provider, costs can be significantly increased at a later date. Contracts often make it difficult to question claimed changes to cost structures, and government managers are often wary of incurring the additional expenses and risks to services and reputation that can accompany the early unilateral termination of contracts.

In the UK, experience has shown that government departments, when faced with escalating costs and poor performance, persevere with established service providers, partly because they have become reliant on the knowledge and goodwill of their agents and do not believe changing providers is a practical or cost-effective option. Vendor dependency means that as time goes on, government becomes less and less able to effectively provide stewardship of the sector. This can occur due to, as outlined above, the deliberate action of vendors or through a more organic process involving skill loss and a general unwillingness to make changes to a sector that appears to be, at least, operating.

This can often be exacerbated by another phenomenon, dubbed 'concentration of service provision'. Despite widespread expectations among policymakers and economists that privatisation and outsourcing would result in government simultaneously promoting and benefiting from competition the reality has been the emergence of oligopolistic markets dominated by a small number of large and powerful corporate providers. In the UK the markets for a wide range of 'back office' and 'frontline' services has

[1] Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform*, Australian Government, 2016. pp 16.

become dominated by four multinational corporations: Atos, Capita, G4S and Serco. A recent assessment of the power of these corporations by the UK National Audit Office (NAO) found that many within government who had come to rely on their knowledge and scale now regarded these major providers as 'too big to fail'.[2] These companies have become so central to the provision of services that government now has an interest in ensuring their viability and profitability as providers, substantially weakening the bargaining power of public sector contract managers and effectively ensuring the continuous renewal of major contracts.

There are examples of this process in Australia also. In Victoria, Metro trains has recently been awarded the exclusive right to bid on another 8 year contract to run the Melbourne public train system despite failing to meet contractual requirements[3] and having its services ranked by service users the worst in Australia in terms of service reliability, ticketing, the timetable and overall satisfaction for the fifth consecutive year.[4] While the government claims that any new contract will be tougher than the previous one, they are unable to provide any detail due to the 'confidential nature of the negotiations'. During the same period we have seen the company treat its workforce poorly on multiple occasions – including attempting to force drivers to accept substantially worse conditions in a recent round of enterprise bargaining. Here we see a failure of government stewardship in action. Not only was the first contract apparently too lax, it was also signed for 8 years - leaving government effectively unable to exert any control over service delivery in the intervening period. Now a new government is unable to inform citizens about exactly what level of service it is buying with their money – leaving the for-profit service provider utterly unaccountable to the public. The fact that this service is a natural monopoly means that competition, contestability and user choice can only be exercised when contracts are up for renewal – a reality that the government 'steward' has neatly sidestepped by giving the existing provider exclusive right to bid. Here we have a previously public asset, run by the public and for the public's benefit handed over to a private for-profit provider while successive government stewards have abrogated their responsibility to ensure quality and effective service delivery.

Similar impacts have been observed in private prisons, where, when compared to publicly run institutions, workers face lower wages and poorer training[5], there are significantly increased rates of prisoner complaints[6] and concerns about the conflict between private aims and the required ethical standards.[7] All of these concerns have occurred in states across Australia despite ongoing supposed government stewardship of the contracts and of the sector as a whole.

There are numerous other examples of situations in which Australians, both as workers and as service users, have suffered from impotent or disinterested government stewardship of marketised industries. Rural customers in the privatised telecommunications market, small investors in the banking and investment advice industry and, as mentioned in the previous submission, many Australians who rely on or work in the early childhood (ECEC) and vocational education sectors. In the VET sector particularly, as covered in the previous ACTU submission, we have seen the

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2 National Audit Office (2013), *The Role of Major Contractors in the Delivery of Public Services*, The Stationery Office, London, p. 10.
3 Carey, Adam, *Full steam ahead: Government offers Metro and Yarra Trams seven more years,* The Age, September 29, 2016.
4 Kate Darvall, *Melbourne Rush Hour: Massive signal fail leaves commuters stranded – after the trains were declared 'the worst in the country'*, Daily Mail Australia, 14 September 2016.
5 WA Prison Officer's union, *Respect the Risk*, 2016
6 Royce Millar, *Private Prisons Complaints Soar*, The Age, September 11, 2008.
7 Ibid

near-complete breakdown of a marketised system, resulting in poor outcomes for students, rorting of the public purse, betrayal of vulnerable students and a loss of public and industry confidence in the quality of skills training. Meanwhile ECEC sector has only achieved what it has due to the passion and dedication of its under-valued workforce, despite the challenges of supply and cost-cutting that the market system has created.

There exists a plethora of these examples – cases in which governments are unable to effectively police the behaviour of for-profit providers in the newly marketised system – exposing workers and service users to the worst of the negative impacts outlined in the ACTU's first submission.

Path two – the overbearing steward

Governments, of course, are not unaware of this process. Many realise that due to either their own internal loss of the skills or motivation or due to the intentional actions of vendors that they will slowly lose their ability to effectively steward marketised sectors. Their reaction leads to the second path that government stewardship can take to failure – that of extreme regulation. This path is different from the first in that it can sometimes slightly reduce the negative impacts of marketisation on service users - though workers are often left just as disadvantaged as in a system with impotent stewardship. What this path achieves however is entirely ensuring that none of the supposed benefits of marketisation, innovation, choice driving quality and cheaper services, ever eventuate.

An excellent example of this process is that of Australian employment services. Initially privatised on the promise to deliver better services for less, what has in fact occurred has been a steady tale of provider misbehaviour followed by closer government regulation of provider conduct in response. This has resulted in a system in which the current jobactive deed, advertised by the government as giving providers 'more freedom', is over 175 pages long. The deed goes into excruciating detail about the way providers can behave, the services they can deliver and the ways in which those services can deliver. This is without even considering the hundreds of additional pages of program guidelines that govern how programs such as Work for the Dole are administered and delivered by employment service providers. Changes in this system only occur as part of semi-regular deed changes or at the now 5-yearly contract roll-overs. This has resulted in a system in which innovation is rare and almost never implemented across the system as a whole[8] and in which job seekers feel providers are so similar that most never utilise their right to choose their provider.[9] In this sector, government stewardship has failed to create an environment in which the supposed benefits of marketisation have been able to be realised. Stewardship in this sector has also failed to prevent the negative impacts of profit-seeking behaviour outlined in the first ACTU submission, with jobactive having been identified by some stakeholders as incentivising providers to 'cream' job seekers most likely to achieve outcomes while 'parking' the most disadvantaged people at the lowest service level. In this way providers will make the largest possible profit from the 'easy' cases and ensure they spend as little as possible on job seekers who need the most assistance but who are unlikely to be profitable.[10] In this case then, government stewardship has failed utterly.

Government stewardship has failed on nearly every occasion to either protect workers and service users from the negative outcomes of marketisation while also in some cases ensuring that even the small, and

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8 An example of this is the 2012-2013 JSA Demonstration Pilots which were run by the government to trial new methods of servicing disadvantaged job seekers. These pilots were never evaluated beyond an interim report and few of their recommendations appear to have been implemented in jobactive

9 Productivity Commission 2002, Independent Review of Job Network, Report No. 21, AusInfo, Canberra

10 Brotherhood of St Laurence, *Response to Employment Services 2015-2020 exposure draft*, BSI, 2014. pp23

debatable, positive impacts are unable to be realised. The Commission is being optimistic in the extreme to state that stakeholders should not be concerned about the impact on workers and vulnerable people of the marketisation of the human service sectors selected for these reforms. Until there is some evidence that government stewardship can actually operate effectively in the real world, perhaps through addressing the issues in sectors such as VET where even the Commission admits it has failed utterly, it is an insufficient protection for any new marketised sectors. If the Commission wishes to convince the Australian people that the vital sectors it has selected for reform can avoid the damaging consequences of the past, it will have to do better than the illusion of control offered by government stewardship.

RESPONSE TO SPECIFIC SECTORS SELECTED FOR REFORM

Prior to entering into a discussion about each of the specific sectors identified for reform, a more general comment needs to be made. The Preliminary Findings Report, in its discussion of each sector, takes the approach of highlighting some current issues with the sector (quality, efficiency availability, choice etc.) and then goes on to suggest that some element of marketisation would fix that issue. The ACTU's previous submission, as well as that of many other organisations, has questioned the automatic linking of for-profit marketisation of public and community sectors and improvements in quality, efficiency or other measures. While it is true that many of these sectors, in fact almost any sector of the economy, could conceivably improve its services, particularly if funded more generously, this inquiry continues to make the unproven assertion that improvements are effectively achieved through for-profit marketisation. It is insufficient for the Commission to merely identify sectors that could conceivably improve and expect stakeholders to follow along that this means marketisation is the answer to delivering those improvements, particularly in light of the significant evidence presented in the first round of submission that marketisation is regularly ineffective at improving outcomes. The Commission needs to be able to demonstrate not only that these sectors may benefit from reform, but that the specific type of reform being proposed is effective. As outlined above, appeals to government stewardship do not provide the assurance necessary that market principles will deliver any improvements to these public and community sectors. The Commission needs to be able to concretely demonstrate this before moving blindly forward with recommendations for reform.

The next section of the submission will briefly address each sector that the Commission has identified as 'best suited' for reform.

Social housing

The issues identified with the social housing sector in the report – poor standard of housing, lack of supply, poor location of existing supply and a demographic mismatch between supply and users are broadly accurate. There are very few individuals involved in the social housing sector in any Australian state that would disagree that improvements cannot be made. As outlined above, where the Preliminary Findings Report is inaccurate is not in the diagnosis of issues in this sector, but in the remedies specified.

There is a fundamental flaw in the Commission's assumption that, because community sector providers are able to effectively deliver services in this sector, for-profit providers would be able to do so also. As discussed in our previous submission, we consider for-profit providers and community sector organisations as entirely distinct actors, with vastly different motivations and therefore impacts on sectors that they enter. Not-for-profit providers in this sector are typically motivated by a desire to deliver quality services and are at best breaking even economically, if not cross-subsidising the costs of this sector with more economically viable work in other sectors. For-profit providers are unwilling to operate on such a basis, meaning that profit must be extracted in some way. With the low growth of government funding in this sector, relative to costs and the increases in demand, the only area in which profits can be made will be in reducing service quality or ensuring that only the cheapest of clients are accepted. For-profit competition in this sector would result in all the negative impacts of marketisation covered in the first ACTU submission. For-profit privatisation would result in nothing less than an exacerbation of the current issues in this sector – it is not a solution.

In terms of user choice in this sector, the Preliminary Findings Report is also accurate in that it identifies the supply issues, small housing stocks and demographic and geographic mismatch, as the primary constraint on user choice. What is not clear is how the Commission foresees the introduction of for-profit providers solving this problem. As the report notes, the NT Department of Treasury and Finance states that approximately 500 properties need to be managed within this industry before even a community-sector organisation can achieve economies of scale.[11] It is not clear why the Commission believes a for-profit provider would make the significant capital investment required to either build 500 new properties or purchase and significantly alter the existing stock to introduce great choice for social housing users. This is particularly unlikely when we consider the low margins in this sector.

The most effective solution to the issues in this sector is not the introduction of for-profit competition – it is simply the re-funding of this sector. Government spending on social housing has failed to keep up with demand and with the changes the sector has needed to undergo. The Preliminary Findings Report fundamentally fails to explain why for-profit providers and market principles would effectively improve outcomes in this sector. This cannot become a pattern of government behavior in Australia – where a sector is underfunded for decades, declared to be underperforming due to that underfunding and then sold off en masse to corporate interests. We already have a social housing sector that wants to deliver better outcomes; it merely needs to be funded to do so.

Public hospital services and specialist palliative care

Public hospitals are one of the most significant and valuable services that government provides to Australian citizens. Next to public schools, public hospitals are a central element of our social democracy. Specialist palliative care has also been included in this section as it is a similar sector and is likely to face similar impacts if exposed to for-profit marketisation. The Commission's recommendation that these vital services be considered for exposure to the dangers of profit seeking behaviour is unacceptable, both on principle and in light of past experience. The Preliminary Findings Report itself acknowledges that the privatisation of public hospitals has failed previously[12] and then goes on to dismiss these failures as 'in the past' and speculate that 'new measures of outputs and quality' may allow this to happen in the present. Tendering public hospitals or elements of their functions to for-profit corporations has failed in the past, for example Port Macquarie Base Hospital, and is continuing to fail today. Attempts in NSW to outsource the 'non-operational' functions of hospitals have resulted in utter failure, in the Royal North Shore Hospital in particular, with the services being quietly moved back in-house by NSW Health.

The Preliminary Findings Report identifies cost-efficiency, equity and service quality as the primary issues in the public hospital sector and then goes on to explain that private providers are the solution to these

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[11] Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform*, Australian Government, 2016. pp 84
[12] Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform*, Australian Government, 2016. pp 99

issues. This is utterly opposed to all the evidence – including previous Productivity Commission findings. In terms of cost, a 2009 Productivity Commission report found NSW public hospitals performed overall three percent more cost efficiently than private facilities.[13] This is backed up by the overseas experience. The 2014 study *The Tragedy of the Private: The Potential of the Public* says that in Europe, the US and Latin America privatised health services are being returned to local government control as it becomes more and more evident that the transfer of service delivery to for-profit companies has failed in every measure, whether of consistent provision, quality of service and value for money.[14] Service quality has been shown to drop in privatised hospitals, with a recent study by Public Service International reporting that the incentive structure in profit-driven systems "…distorts the types of treatments provided towards those that are more profitable for the provider even where they are less appropriate and more costly."[15] A 2014 McKell institute report provides a summary of the evidence about the effectiveness of public vs profit-driven hospitals.

> "*the emphasis by public hospitals on equity of access, care based on needs rather than profitability, and their presence in many regional and remote communities makes public hospitals vastly superior to private hospitals in one other crucial way – the ability to provide access to quality health services for Australia's most vulnerable."*[16]

Exposing the users of public hospitals and specialist palliative care to for-profit providers is not only an ineffective solution to any issues with the sector; it is an irresponsible decision to expose people undergoing significant stress and upheaval to the profit motivations of large corporations.

Public dental services

The decision to include public dental services on the list of services 'in need' of the particularly type of reform the Commission is proposing is a bizarre one. By the Commission's own admission, there are no issues with cost in this sector, nor are there issues of quality. Supply of services in cities is admitted to be sufficient and while, as with many services, more services in rural areas would be advantageous, it doesn't appear to be an urgent problem. And yet public dental services make the list of human service sectors that the Commission believes would benefit from the introduction of for-profit competition. Once again, there appears to be no real rationale for this. For-profit providers of services have often proven to be less willing to deliver services in the thin markets of regional areas than are public or community sector providers. As we have seen in disability services, there are often far fewer providers willing to service regional areas and those providers are rarely for-profit organisations. It seems unlikely that there exists a vast group of dentists merely waiting for the opportunity to secure relatively low-paying public dental services contracts who are simultaneously ready and willing to move out from the capital cities.

The only other real issue the Report raises with the public dental system is that often service users have no choice about where they go to receive services. Unsurprisingly, the solution the Commission offers to this conundrum is to allow for-profit businesses to deliver the service. There is no explanation as to why service users cannot just be given their choice of public providers who do, even the Commission admits, provide a high quality, effective and cost-efficient service. The inclusion of public dental services exposes

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13 Productivity Commission, *Public and Private Hospitals*, Australian Government, 2009.
14 Wainwright H, *The Tragedy of the Private: The Potential of the Public*, PSI International, March 2014
15 Lethbridge J, "Financing health care: False Profits and the Public Good", PSI International November 2014
16 *Risky Business: the pitfalls and missteps of hospital privatisation*, McKell Institute 2014, p15

this inquiry most clearly as what it is – a predetermined solution looking for a problem, and a triumph of ideology over evidence.

Human services in remote Indigenous communities

Services in remote indigenous communities are inarguably not achieving the outcomes that they should be. The issues with service quality and access need to be addressed and indigenous Australians need to receive a better quality of service. The ACTU does not believe that for-profit providers or the exposure of these thin, high-overhead markets to profit-seeking behaviour is the answer to deliver these outcomes. The ACTU strongly believes the most effective way to deliver these outcomes is to ensure that services for Indigenous communities are either owned or run by the Indigenous community in question. We note that the positive outcomes that arise from community control and the preference for community organisations over private organisations expressed by Indigenous communities is a major theme of the Report for this sector. The ACTU would hope that this indicates this is the direction in which the Commission will recommend that reform be directed.

Grant-based family and community services

The Australian Services Union has already, as part of the first round of this inquiry, provided a detailed submission as to why the family and community services sector is unsuited to the introduction of market principles and for-profit providers. The main issues this submission covered are:

- **User choice is problematic in the sector**.
  - Market pressures drive a demand for the lowest common denominator meaning that quality service providers are driven out of the market resulting in a reduced diversity of choices for users. Safeguards cannot fully prevent the downward pressure that an individualised funding market creates on service quality, loss of diversity, social innovation, wages and conditions including increased use of casuals and independent contractors, or compensate for the information disadvantage that users have.

- **'Efficiency' can be the enemy of quality**
  - 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.

- **Not-for-profit providers are connected to the community where for-profit providers are not**
  - The not-for-profit family 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. At their best 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. 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.

- **Competitive tendering is unsuited to the sector**
    - o The process of tendering is inefficient and expensive, often requiring service to outlay capital to hire specialist tender writers
    - o It does not promote diversity of service provision or competition, evidence showing that where competitive tendering has been used, the result is overwhelmingly the consolidation of service providers.
    - o The family and community services sector operates in a fixed labour cost environment, meaning that efficiencies can only be derived from reductions in quality of service, skills of staff or working conditions and security.
    - o It does not foster innovation as 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.

If the Commission is interested in further detail on why the family and community services sector is not suited to the type of reform being proposed, the ACTU recommends both the ASU's original submission to this inquiry as well as any supplementary submission they may make for further detail on this sector.

IN SUMMARY

The ACTU reiterates the content of our first submission to this inquiry. There is currently no evidence that any public or community sector delivered human service in Australia would benefit from the introduction of for-profit competition or the introduction of market principles. The Commission has, in its Preliminary Findings Report, failed to effectively respond to the evidence that these principles in fact result in poorer quality service, worse wages and conditions for workers and longer term deterioration of diversity and choice. Nor has it provided convincing evidence of its own. The sectors selected for 'reform' are largely unsuitable for the type of reform the Commission has been instructed to recommend. Continuing with this process is not only transparently ideological, it is damaging to the reputation of the Commission as an evidence-based organisation. Until it can be shown that marketisation of these sectors can deliver good outcomes for workers, service users and the Australian community, without a reliance on the discredited concept of government stewardship of a marketised system, no such reform should be contemplated.

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