



# Inquiry into Human Services

Community and Public Sector Union & State Public Services Federation Group  
Joint submission to the Productivity Commission



## Executive summary

The clear task given to the Productivity Commission Inquiry into Human Services is ‘to develop policy options to improve service provision, with a particular emphasis on using competition, contestability and user choice.’ The directions are deeply flawed for two reasons. First they do not require any consideration of the evidence of the current effectiveness of government provision of human services. Second, the solution to improve effectiveness is to privatise some public services. The apparent question is what public service(s) to privatise, rather than asking how effective are current services, where improvements are needed and, what might be the best way to achieve them.

We would welcome a genuine, evidence-based discussion about this and other aspects of public service delivery. But the Turnbull government and the Productivity Commission’s inquiry to justify further privatisation of public services is a farce, and an effort to push an agenda which benefits business at the expense of our community.

The CPSU submission draws from available evidence including the views of members working in government service provision to conclude that:

- public services are not suitable for privatisation.
- greater funding is the solution to current problems.
- privatisation does not lead to increased competition but market consolidation.
- privatisation does not increase user choice.
- privatisation does not improve quality of service provision.
- profit focus affects quality by lowering wages and working conditions.
- the role of the public sector is necessarily much broader than that of contract manager.
- the public sector provides important protections around the use of public money including accountability.
- there are areas of service where investment in both human and physical infrastructure are needed. This investment is the responsibility of government to ensure effective provision of public services.

The characterisation of public services as simply an item of consumption is problematic. The issue is much more complex. People accessing public services are not ‘consumers’ buying a new car or a washing machine. They are people who are accessing a government service at a time of need, for example in situations where they are unwell, or in need of support around matters of housing, employment, income support, family difficulty or managing a disability. They are clients, not ‘consumers’. The circumstances of their access to government services are likely to dictate a need for equity, simplicity, clear arrangements around entitlements, and a supportive environment that is people centred.

It is our view that collecting and evaluating the evidence on what the community needs and an assessment of the effectiveness of current services must be at the heart of this Productivity Commission Inquiry. Should this occur, we expect that there will be little evidence to support the premise of this Inquiry: that privatising government services will increase quality and choice. Our research suggests quite the opposite: that privatisation leads to market concentration, causing inequality of access, a drop in quality of service provision, cost shifting from government to the ‘consumer’ and to workers (via lower wages and conditions), an increase in prices and in some cases instability and collapse.

If increased user choice is the new holy grail, the Productivity Commission should instead consider how choice and influence might be given to clients (they are not ‘consumers’) within the existing system.



## Introduction

This submission has been prepared by the joint divisions of the Community and Public Sector Union (CPSU), the primary union covering public sector workers in the Commonwealth, State, and Territory governments. As well as drawing on academic sources and studies of the privatisation of public services both in Australia and overseas, this submission reflects the feedback of more than 1,200 CPSU members – those employed in the very areas of the public sector, at the Commonwealth and State/Territory level, that the Productivity Commission has assumed are inefficient - health, education, community services, job services, social housing, prisons, aged care and disability services.

### The Productivity Commission has the wrong starting point: that public services can only be improved by privatisation

*'The objective of this inquiry is to develop policy options to improve service provision, with a particular emphasis on using competition, contestability and user choice.'*

The clear task given to the Productivity Commission Inquiry into Human Services is 'to develop policy options to improve service provision, with a particular emphasis on using competition, contestability and user choice.' The directions are deeply flawed for two reasons. First they do not require any consideration of the evidence of the current effectiveness of government provision of human services. Second, the solution to improve effectiveness is to privatise some public services. The apparent question is what public service(s) to privatise, rather than asking how effective are current services, where improvements are needed and, what might be the best way to achieve them.

As the Centre for Policy Development noted in 2014, "dogmatic belief in the relative efficiency or inefficiency of the public or private sectors [is a] poor substitute for evidence and analysis. What matters is what works and the evidence is that Australia's system of public administration works reasonably well."<sup>1</sup> It is the CPSU's position that any *genuine* inquiry must begin with an assessment of the current system, identifying areas of strength and weakness, before using this evidence to investigate where and how efficiency and effectiveness may be improved.

### ... and inefficiencies cannot be fixed by introducing competition, contestability, and user choice

Regardless, the CPSU contends that the market principles of 'competition, contestability, and user choice' are not applicable to the delivery of public services. Nor should a competitive market for public services be assumed to be automatically achievable or positive. These underlying assumptions of the Productivity Commission limit the scope of the Inquiry to simply investigating how to reduce the size of direct government service provision, without appropriate consideration of the broader public interest and views of the community.

It must not be assumed that the community doesn't have a view on how public money is spent. The outcry over the possible privatisation of Medicare by the Coalition during the 2016 election is a clear demonstration of this, and is confirmed by survey after survey<sup>2</sup> providing empirical evidence about the importance placed by the community on public services and their desire to see them remain in public hands.

It is our view that market principles are based on assumptions that simply do not exist in the area of public service delivery. For instance, 'user choice' first assumes that 'consumers' are informed about their options, the level of service delivery to expect and, have the ability to make a rational decision. This may not be the case for many reasons; for instance, vulnerable citizens may not have the knowledge or ability to make a decision. In addition, it is simply not sustainable in many geographical regions and areas of service delivery to have multiple providers offering different products – so in these cases, there is no way to provide a choice for 'consumers'. Market principles also assume that the supply of goods and services will respond to demand: this is clearly not the case in many areas such as public housing, where demand significantly outstrips available housing.

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<sup>1</sup> C. Stone (2014), 'False Economies: Unpacking public service efficiency', Centre for Policy Development, Sydney, p.5.

<sup>2</sup> See EMC (various dates) *Essential Report*, <http://www.essentialvision.com.au/category/essentialreport>, and on Medicare: <http://www.sbs.com.au/news/article/2016/06/20/vote-2016-majority-voters-concerned-about-privatisation-medicare-poll>, accessed 21/7/2016.

Yet these principles are already being applied in the public service

The 2014-15 Commonwealth Budget set in train the Department of Finance Contestability Program. Under this program, the Department has been assessing “all current government functions to determine whether particular functions should be open to competition and how competition should occur.”<sup>3</sup> Two years on, little information has been forthcoming from the Department about its findings beyond headline savings from cutting programs and administrative activities.<sup>4</sup> Perhaps one could assume that, consistent with the conclusions of the 2014 CPD paper, the public service is working reasonably well?

Along a similar line, in the State public sectors, experiments with alternative funding models are occurring. Most notable of these is the trial of social impact bonds (SIBs).

**Social Impact Bonds**

While not directly in the scope of this review, the CPSU notes that along with traditional privatisation, the range of ways in which the provision of public services can be financed is changing. Governments are looking to alternative financing arrangements (beginning with the UK Peterborough Prison in September 2011, followed by the United States, Australia and New Zealand). Most popular seem to be Social Impact Bonds (SIBs). Mitropoulos and Bryan note that these “are profoundly challenging the conventional division between states and markets, and public and private sectors, since they involve the private funding of programs that are embedded within the provision of state services.”<sup>5</sup> Mitropoulos and Bryan conclude that while advocates of SIBs, and “those in the welfare sector who embrace their introduction as manna from heaven, might reflect that while new projects may come online, and some positive outcomes may have been achieved, the framework of venture capital and the stamp of profitability will be setting agendas. In the process, the state itself becomes the enforcer of – not a site of alternatives, let alone resistance to – those commercial agendas.”<sup>6</sup>

Despite the rhetoric of SIB advocates, the use of SIBs to deliver services has not been successful: the most recent example being the failure of the New Zealand SIB pilot which aimed to help people “with mental health problems enter the workforce by funding employment consultants in GP practices.”<sup>7</sup>

Given the experiment thus far with SIBs, it is clear that this model does not guarantee efficient delivery of services or, particularly with such a high failure rate, quality of outcomes for citizens. The CPSU does not support the use of SIBs or other forms of private sector financing to deliver public services.

<sup>3</sup> Department of Finance (2015), ‘What is the Contestability Programme’, <https://www.finance.gov.au/resource-management/governance/contestability/overview/>, accessed 15/7/2015.

<sup>4</sup> Commonwealth Government (2016), ‘2016-17 Budget Paper No.4 – Preface’, May 2016, [http://budget.gov.au/2016-17/content/bp4/html/02\\_preface-01.htm](http://budget.gov.au/2016-17/content/bp4/html/02_preface-01.htm), accessed 27/7/16

<sup>5</sup> A. Mitropoulos and D. Bryan (2015), ‘Social benefit bonds: Financial markets inside the state’, p.154, in G. Meagher and S. Goodwin (eds) (2015), *Markets, rights and power in Australian social policy*, Sydney University Press, Sydney, pp.153-168.

<sup>6</sup> *Ibid.*, p.166.

<sup>7</sup> The Mandarin, ‘Social bond collapse blamed on ‘tedious bureaucratic processes’, *The Mandarin*, [http://www.themandarin.com.au/67636-new-zealand-first-social-impact-bond-collapse/?utm\\_source=The%20Juice%20-%20combined%20list&pgnc=1](http://www.themandarin.com.au/67636-new-zealand-first-social-impact-bond-collapse/?utm_source=The%20Juice%20-%20combined%20list&pgnc=1), accessed 15/7/2016.

But there is no need for evidence? The Terms of Reference suggest that the Productivity Commission recommendations will be to privatise regardless

The Terms of Reference limit this Inquiry to only examine those reform options which introduce greater 'competition, contestability, and user choice' – these buzzwords are the latest trend in New Public Management (NPM) theory, which seeks to introduce 'market discipline' into the running of the public sector<sup>8</sup>. In essence, 'competition, contestability, and user choice' can be captured by one concept: privatisation. Indeed, the CPSU is concerned that the limited scope of the Terms of Reference mean that the outcome of the inquiry is *fait accompli* - the recommendations of this inquiry will be to further privatise public services.

The CPSU does not subscribe to NPM theory. Rather, we adopt Aulich and O'Flynn's definition of privatisation, as being a "shift in focus from public to private ...where there are substitutions for government ownership, government funding, and government provision."<sup>9</sup> This definition includes practices such as asset sales, contracting out, user-pays, voucher systems, public-private partnerships, private funding of public services, deregulation, commissioning, social impact bonds and marketisation.<sup>10</sup> In this submission, we will refer to all these forms of non-government provision of government services simply as privatisation.

The apparent question is what public service(s) to privatise?

The framing of the Inquiry as one into 'human services' is confusing. Rather than an investigation into 'human services', the Inquiry is actually a broad investigation into which public services could be privatised. While suggesting that health, education, community services, job services, social housing, prisons, aged care and disability services may be ripe for the picking, the Commission also notes that this list is 'not exhaustive' and 'invites' other suggestions.

The CPSU notes that the first stage of the Inquiry also seeks to examine previous examples of contestable markets being introduced. The experience of introducing a competitive market in job services shows that it can be very problematic. Drawing on available evidence, it is the CPSU's position that:

- a) public services are not suitable for privatisation.
- b) greater funding is the solution to current problems
- c) privatisation does not lead to increased competition but market consolidation.
- d) privatisation does not increase user choice (assuming user choice is a holy grail...).
- e) privatisation does not improve quality of service provision
- f) profit focus affects quality by lowering wages and working conditions
- g) the role of the public sector is necessarily much broader than contract manager.
- h) the public sector provides important protections around the use of public money including accountability.

It is concluded that many of the purported benefits from privatisation under whatever guise do not occur. Where it has occurred, it has a poor record - markets are imperfect, the 'benefits' of user choice are illusory, competition does not raise quality of service provision and, wages and working conditions affect the attraction and retention of staff while public accountability falls.

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<sup>8</sup> G. Meagher and S. Goodwin (2015), 'Capturing Marketisation in Australian Social Policy' in *Markets, rights and power in Australian social policy*, eds G.Meagher & S Goodwin, Sydney University Press, Sydney, p.4.

<sup>9</sup> C. Aulich and J. O'Flynn (2007), 'From Public to Private: The Australian Experience of Privatisation', *The Asia Pacific Journal of Public Administration*, Vol 29, No 2, p. 155.

<sup>10</sup> *Ibid.*

### a) Public services are not suitable for privatisation

Entities delivering public services embody the shared values of public service and those institutions send out important signals about the kind of society we are. Few of us want to live in a society where almost every relationship involves the extraction of profit.<sup>11</sup> The introduction of competition or outsourcing (either the private or not-for profit sector) introduces a profit motive that is detrimental to the services delivered. Contrary to standard economic reasoning, introducing a profit motive is not inert, it can alter the character of the public services provided. Important public service values such as independence, quality, accountability, transparency and reliability can be crowded out by concerns about the profitability of private providers.

The Productivity Commission provides no evidence for its assertion that public services are in need of 'competition, contestability and user choice'. Indeed, there is much evidence to suggest that Australia has high performing and efficient public services. For instance, when comparing Organisation for Economic Cooperation and Development (OECD) countries in terms of government processes and outcomes, Australia performs well overall<sup>12</sup>.

The OECD is not the only international institution that rates Australia's provision of public services as highly effective. The World Bank ranks Australia in the 92<sup>nd</sup> percentile for government effectiveness and 98<sup>th</sup> percentile for regulatory quality.<sup>13</sup> Government effectiveness measures the quality of public services, their independence and the quality of policy formulation and implementation. Regulatory quality measures the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.

In comparisons of satisfaction and confidence across public services, Australian citizens report being more confident and satisfied with their services than the OECD average. For example, 80 per cent of Australians are confident/satisfied with the health care system, compared with the average of 71 per cent of citizens in OECD countries<sup>14</sup>. As Richard Mulgan notes regarding OECD comparisons: 'there is room for more improvement, of course, but more from the standpoint of fine-tuning a well-functioning machine, not that of overhauling an obsolete structure'<sup>15</sup>.

### b) Greater funding is the solution to current problems

While there is community satisfaction with and confidence in Australia's public services, there is significant and growing pressure on services and on those who design and deliver them – a trajectory which is not sustainable. The fact is that many of Australia's public services are at a tipping point with some parts already in crisis.

The cumulative impact of years of public service funding and staffing cuts are taking their toll on the quality of service provision. The experience in the Department of Human Services (DHS) provides a pertinent example, but it is by no means the only example where cuts are detrimentally affecting public service quality.

The cause of problems has been a lack of investment in ICT and inadequate staffing levels. The recent example of Austudy payments being delayed by up to four months<sup>16</sup> demonstrates this. Delays were caused by the failure of IT software and a shortage of staff<sup>17</sup>. Many missed out on the chance to study as a result of delays and some were forced to drop out midway through courses.

<sup>11</sup> R. Muir, 'After the G4S debacle, it's time to re-think the role of the private sector', *New Statesman*, 17 July 2012, <http://www.newstatesman.com/blogs/staggers/2012/07/after-g4s-debacle-its-time-re-think-role-private-sector>, accessed 20/7/16.

<sup>12</sup> OECD (2015), 'Government at a Glance 2015: Country Fact Sheet, Australia', <https://www.oecd.org/gov/Australia.pdf>, accessed 19/7/16.

<sup>13</sup> World Bank, 'Worldwide Governance Indicators - 2014 Update', 25 September 2014, <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>, accessed 26/7/16.

<sup>14</sup> OECD, (2015), 'Government at a Glance 2015: Country Fact Sheet, Australia', <https://www.oecd.org/gov/Australia.pdf>, accessed 19/7/16.

<sup>15</sup> R. Mulgan, 'Public service cuts and other illusions', *Canberra Times*, 2 April 2013, <http://www.canberratimes.com.au/national/public-service/public-service-cuts-and-other-illusions-20130331-2h15j.html>, accessed 19/7/16.

<sup>16</sup> Hack, 'Centrelink payments delayed up to four months, students freakin out', *Triple J*, 21 April 2016, <http://www.abc.net.au/triplej/programs/hack/students-waiting-four-months-centrelink-payments-delayed/7346960>, accessed 25/7/16.

<sup>17</sup> N. Towell, 'Centrelink 'auto-rejects' tens of thousands of claims', *Canberra Times*, 2 May 2016, <http://www.canberratimes.com.au/national/public-service/centrelink-autorejects-tens-of-thousands-of-claims-20160429-goiarp.html>, accessed 25/7/16.

None of this is a secret. It is well known that the quality of services to DHS customers have been affected by problems with Centrelink's information and communication technology (ICT)<sup>18</sup>. The most recent Budget also cut staffing levels with the loss of 918 staff<sup>19</sup> and slashed \$80 million in funding over the forward estimates.<sup>20</sup> Greater investment in ICT, reversing these cuts and providing an additional 1000 staff at a cost of over \$100 million per annum<sup>21</sup> would go a long way to improving the quality of services provided.

Introducing contestability and privatising functions will not improve the quality of public services. It will not help to repair the substantial and unsustainable damage done to public services through years of budget cuts. It will only exacerbate current problems. What is clearly needed is more recurrent funding to reduce the growing pressures on our public services and improve service quality.

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<sup>18</sup> J. Hockey (Treasurer), Interview with Neil Mitchell, 3AW, transcript, 24 April 2014, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F3128248%22>, accessed 25/7/16.

<sup>19</sup> Social Services Portfolio (Department of Human Services) (2016), 'Portfolio Budget Statements 2016-17: Budget Related Paper No. 1.15B', May 2016, p.13.

<sup>20</sup> Commonwealth Government (2016), '2016-17 Budget Paper No.2 – Part 2: Expense Measures', May 2016, [http://www.budget.gov.au/2016-17/content/bp2/html/bp2\\_expense-21.htm](http://www.budget.gov.au/2016-17/content/bp2/html/bp2_expense-21.htm), accessed 25/7/16.

<sup>21</sup> Australian National Audit Office, Audit Report No 37: Management of Smart Centres' Centrelink Telephone Services, p.84.

## Department of Human Services

Blowouts in the number of unanswered Centrelink calls highlight the pressure that DHS is currently under as a result of cuts. The pressures are so great that a third of all Centrelink calls are unable to enter the network, that is, calls are blocked and callers hear a 'busy' signal.

In 2014-15, the number of blocked calls made to Centrelink was more than 22 million. Only 40 million of the 62 million attempts to contact Centrelink by phone were successful.<sup>22</sup> In 2013-14, 13.7 million of 56.8 million calls made were blocked meaning the number of calls to Centrelink that have gone unanswered in 2014-15 increased by 61 per cent<sup>23</sup> while 4 million fewer calls were answered than in the previous year.<sup>24</sup> The proportion of calls being answered has also plummeted from 75 per cent in 2013-14 to 64 per cent in 2014-15.<sup>25</sup>

Pressures are not isolated to the DHS telephone network. As part of Service Delivery Reform, from early 2010, many Medicare, Centrelink and Child Support services were co-located into the same offices.<sup>26</sup> Currently 333 customer service centres are "co-located", providing Medicare and Centrelink services. While the intent was to make dealings with government easier through better service delivery and coordination of services<sup>27</sup>, inadequate resourcing has meant longer wait times for the public, especially as staffing levels across the portfolio (prior to merger) have fallen by 4,822 or 13 per cent since 2010-11.<sup>28</sup>

Data tabled by DHS to the Senate showed that co-located offices are 6 of the top 10 busiest Service Centres in the country.<sup>29</sup> It suggests that where DHS staff are handling all different inquiries (Centrelink, Medicare and Child Support) in one-stop shops, the wait time increases for some clients, primarily Medicare clients whose interactions are often less complex. An ANAO report from 2013 on co-location confirms this.<sup>30</sup>

Reducing staffing levels affects not only those seeking face to face assistance, but also call waiting times.<sup>31</sup> While the average speed of call answer still meets DHS' key performance indicator (KPI) of under 16 minutes, it has increased from 10 minutes and 2 seconds in 2012-13<sup>32</sup> to 15 minutes and 40 seconds in 2014-15 (Table 1).<sup>33</sup>

<sup>22</sup> N. Towell, 'Off the hook: Centrelink's 22 million unanswered calls', *Canberra Times*, 23 January 2015, <http://www.canberratimes.com.au/national/public-service/off-the-hook-centrelinks-22-million-unanswered-calls-20160122-gmbrnp.html>, accessed 26/7/16.

<sup>23</sup> F. Keany, 'Finger pointed at smartphones, after 22 million unanswered calls to Centrelink', *ABC Online*, 23 October 2015, [www.abc.net.au/news/2015-10-23/centrelink-missing-millions-of-phone-calls/6880408](http://www.abc.net.au/news/2015-10-23/centrelink-missing-millions-of-phone-calls/6880408), accessed 26/7/16.

<sup>24</sup> N. Towell, 'Off the hook: Centrelink's 22 million unanswered calls', *Canberra Times*, 23 January 2015, <http://www.canberratimes.com.au/national/public-service/off-the-hook-centrelinks-22-million-unanswered-calls-20160122-gmbrnp.html>, accessed 26/7/16.

<sup>25</sup> N. Towell, 'Off the hook: Centrelink's 22 million unanswered calls', *Canberra Times*, 23 January 2015, <http://www.canberratimes.com.au/national/public-service/off-the-hook-centrelinks-22-million-unanswered-calls-20160122-gmbrnp.html>, accessed 26/7/16.

<sup>26</sup> Australian National Audit Office (2014), Audit Report No.42: Co-location of the Department of Human Services' Shopfronts, p.10.

<sup>27</sup> Australian National Audit Office (2013), Audit Report No.42: Co-location of the Department of Human Services' Shopfronts, p.25.

<sup>28</sup> CPSU analysis based on previous Budget ASL for DHS portfolio

<sup>29</sup> Australian Senate, Question on Notice 331, 6 May 2014, <http://www.aph.gov.au/qon/question?number=331&parliament=44>, accessed 25/7/16.

<sup>30</sup> Australian National Audit Office (2013), Audit Report No.42: Co-location of the Department of Human Services' Shopfronts, p.68.

<sup>31</sup> P. Donald, 'Centrelink customers complain of long waiting times to access phone and online services', *ABC Online*, 14 January, 2016, <http://www.abc.net.au/news/2016-01-14/centrelink-customers-complain-of-long-waiting-time/7087770>, accessed 26/7/16.

<sup>32</sup> Department of Human Services (2014), DHS Annual Report 2013-14, p.14

<sup>33</sup> Department of Human Services, Service Delivery Transformation, DHS Annual Report 2014-15, 24 September 2015, <http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/resources/1415/part-04/service-delivery-transformation>, accessed 25/7/16.



**Table 1. DHS performance<sup>34</sup>**

KPI	Target	2013-14	2014-15
Medicare Services Processed	N/A	358.3 million	373.4 million
Average speed of call answer	≤16 minutes	14 minutes 26 seconds	15 minutes 40 seconds
Processing: Percentage of claims processed within standard	≥82%	98%	84.6%

Source: Department of Human Services, 2013-14 and 2014-15 Annual Report

Around 30 per cent of the calls that are able to enter the network are abandoned by customers because of high average wait times.<sup>35</sup> Call wait times have been the largest single cause of complaint regarding Centrelink services in each of the past three years, with customer satisfaction with Centrelink telephone services falling to 66.6 per cent in 2013–14 from 70.4 per cent in 2012–13.<sup>36</sup> Unsurprisingly, customer satisfaction standards are below performance indicators.<sup>37</sup>

The Welfare Rights Network says complaints about Centrelink are up 35 per cent in just two years, with more than 62,000 grievances reported through the government's official channels in the past financial year.<sup>38</sup> More than 11,500 complaints were made about telephone wait times or calls not being able to get through in 2014-15 alone. The Commonwealth Ombudsman has confirmed that it was fielding complaints about Centrelink, in the five months to November 2015, at an average rate of 660 a month.<sup>39</sup>

These wait times have a significant impact on those who rely on DHS. For instance, Aboriginal and Torres Strait Islander people in remote communities who share one telephone sometimes take more than one day to access telephone services. In these circumstances, people queue to use the telephone and may miss out if others' calls are lengthy, as access is available for a limited time each day.<sup>40</sup>

These lengthy waiting times have resulted in increased customer aggression against DHS employees. In the 11 months until the end of May 2015, the number of aggressive incidents directed at Centrelink staff rose to 24 a day from 20 a day in 2012-13, up 20 per cent. There has also been an increase in the number of Centrelink customers who have had service restrictions imposed upon them because of aggressive behaviour. There were 776 people on some kind of service restriction in 2012-2013 and this jumped to 998, or up 29 per cent, in 2014-2015.

<sup>34</sup> N. Towell, 'Off the hook: Centrelink's 22 million unanswered calls', *Canberra Times*, 23 January 2015, <http://www.canberratimes.com.au/national/public-service/off-the-hook-centrelinks-22-million-unanswered-calls-20160122-gmbrnp.html>, accessed 25/7/16.

<sup>35</sup> Australian National Audit Office (2015), Audit Report No.37: Management of Smart Centres' Centrelink Telephone Services, p.56.

<sup>36</sup> Australian National Audit Office (2015), Audit Report No.37: Management of Smart Centres' Centrelink Telephone Services, p.44.

<sup>37</sup> Department of Human Services, Performance against key performance indicators, DHS Annual Report 2014-15, 24 September 2015, <http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/resources/1415/part-02/performance>, accessed 25/7/16.

<sup>38</sup> N. Towell, 'Complaints soar in Centrelink's 'woeful year'', *Brisbane Times*, 25 December 2015, <http://www.brisbanetimes.com.au/national/public-service/complaints-soar-in-centrelinks-woeful-year-20151221-glsikg.html>, accessed 25/7/16.

<sup>39</sup> N. Towell, 'Complaints soar in Centrelink's 'woeful year'', *Brisbane Times*, 25 December 2015, <http://www.brisbanetimes.com.au/national/public-service/complaints-soar-in-centrelinks-woeful-year-20151221-glsikg.html>, accessed 25/7/16.

<sup>40</sup> Australian National Audit Office (2015), Audit Report No.37: Management of Smart Centres' Centrelink Telephone Services, p.46.

### c) Privatisation does not lead to increased competition but market consolidation

A key argument used to support privatisation is that allowing the private sector to break down a 'public monopoly' in service provision will lower costs and provide more choice through competition to end users.

However, public services provided to non-paying 'customers' operate in markets that are different to those with paying customers. Any competition is largely confined to tenders and re-negotiation with contract managers.<sup>41</sup> As contracts increase in scope and complexity, commensurate with the services being outsourced, the cost and complexity of the tendering process reduces the number of competitors, with large firms eventually dominating the provision of these services.<sup>42</sup>

This is what has occurred in Australia, where the complexity of service provision has led to larger firms crowding smaller operators out of the market - creating an oligopoly or even a private sector monopoly. How it could be any different is questionable given commentary that "Australia is a relatively small market, distant from other developed economies. Entering the Australian market is usually a relatively low priority for efficient international players. There is often only room for a few players with minimum efficient scale."<sup>43</sup>

Job services provides the perfect example of the workings of imperfect markets. In 1997, 306 core Job Network providers were selected to provide employment services previously provided by government. After the 2003 contracts were issued, it was estimated that the 'top 12 agencies' held just under 60 per cent of the market. By 2009, the number of core providers had fallen from 306 to just 99.<sup>44</sup> A recent ANAO report indicates that it has since decreased further to just 85 providers<sup>45</sup>.

It is not the only example. There is an oligopoly in private prisons in Australia; at the time of writing there are only three contractors responsible for managing prisons in Australia (GEO Group, G4S, and Serco), with a fourth provider, Sodexo, recently having won the contract for the new women's prison in WA. The limited number of private providers leads to market capture, which further limits competition. In 2011, multinational company Serco was the only private prison operator in WA (Serco operates Acacia prison), and was then the sole bidder to operate a new young adult prison.<sup>46</sup> The creation of 'public service markets' in the United Kingdom has similarly led to an oligopoly situation where providers like Serco and G4S are seen as 'too big to fail'.<sup>47</sup>

Quite simply, as larger contractors acquire smaller businesses that have won contracts, consolidation of the market and reduced competition results.<sup>48</sup>

The United Kingdom's National Audit Office has acknowledged that it can be difficult to maintain competitive pressure through the different stages of a contract. It agrees that complex contracts can diminish competition when the contract begins and expensive variations can reduce cost-effectiveness. The Audit Office noted that existing providers may also have an in-built advantage when contracts are up for renewal because they are seen as a safer and easier option<sup>49</sup>.

The consequence of such arrangements is that public funds are being used to maximise profitability of private companies and their shareholders, with the funds available for direct provision of services reduced commensurately. Lack of disclosure of 'commercial in confidence' arrangements means that public scrutiny of the cost, quality and profit margins associated with such contracts is extremely limited.

<sup>41</sup> B. Cook, V. Quirk and W. Mitchell (2012), 'The Impact on Community Services of Staff and Service Reductions, Privatisation, and Outsourcing of Public Services in Australian States', *Centre of Full Employment and Equity*, University of Newcastle, pp.143-144.

<sup>42</sup> L. Keen, 'Sims threat to big state asset sales', *Australian Financial Review*, 23 June 2014, [http://www.afr.com/p/national/sims\\_threat\\_to\\_big\\_state\\_asset\\_sales\\_Bb6ZSGjoZ2PlpIWTHTsS6L](http://www.afr.com/p/national/sims_threat_to_big_state_asset_sales_Bb6ZSGjoZ2PlpIWTHTsS6L), accessed 24/7/16.

<sup>43</sup> J. Daley, June 2012, 'Game-changers : Economic reform priorities for Australia', *Grattan Institute*, p.22.

<sup>44</sup> D. Finn (2011), 'Job Services Australia: design and implementation lessons for the British context', *Department of Work and Pensions*, p.10.

<sup>45</sup> Australian National Audit Office (2014), Audit Report No 37: Management of Services Delivered by Job Services Australia, p.13.

<sup>46</sup> C. Papas, 'Serco to run youth prison', *New Matilda*, 16 November 2012, <http://newmatilda.com/2011/12/16/serco-run-youth-prison> accessed 26/6/14.

<sup>47</sup> A. White, 'The rise of the shadow state: the truth about outsourcing', *New Statesman*, 3 December 2012,

<http://www.newstatesman.com/politics/2012/12/rise-shadow-state-truth-about-outsourcing>, accessed 26/6/14.

<sup>48</sup> National Audit Office (2013), 'The role of major contractors in the delivery of public services', p.14.

<sup>49</sup> *Ibid.*

#### d) Privatisation does not increase user choice

'User choice' has become a powerful concept in public policy circles in recent years. Meagher and Goodwin note that 'user choice' is an attractive concept because "the alternative to choice is framed as *someone else deciding* on one's behalf."<sup>50</sup> They note that the amorphous concept of choice has been mobilised as an important justification for privatisation. Terry Carney's analysis makes this connection by showing that greater 'user choice' in certain areas of public service delivery (e.g. personal budgets to spend on services) has occurred in conjunction with a tightening of social policy through quarantining of welfare payments. Although these are apparently two different policy approaches - expanding choice in the first instance and limiting it in the second - Carney points out that the two approaches both individualise what are structural causes of social disadvantage, and assume that the clients have agency to act in response to incentives to improve their situation.<sup>51</sup> Carney's analysis is helpful in situating the concept of 'user choice' in NPM theory.

'User choice', according to NPM advocates, is supposed to mean a diversity of service providers for 'consumers' (no longer citizens or clients: under NPM everyone is a customer) to choose from.<sup>52</sup> Williams and Dickinson note that "at first glance, this echoes the user-led, civil rights based approach advocated by Glasby and Littlechild (2009). However, another reading interprets personalisation as a subterfuge for shifting relations of control. This more critical perspective portrays personalisation as an extension of a New Public Management philosophy designed to increase market reach and in the process force individuals to take sole responsibility for their own (lack of) wellbeing."<sup>53</sup>

There is an assumption that the market is perfect and users have all the information necessary to make an informed choice. However, this is often not possible due to the very nature of public services. Public services are often an 'experience good' meaning that the exact nature of the service is not known until after purchase, and often not for some time after that<sup>54</sup>. Lacking knowledge about the quality of service, 'consumers' make choices using indicators that may not be good proxies for quality, for example, price.

If consumers, lacking evidence on quality of care, place too high a weight on fees and the physical appearance of facilities in making their initial choice, then the new entrants could compete by providing a grand appearance to attract consumers, forcing down the quality of service to cut their costs. The system could end up with an unbalanced package of price and quality.

In addition, service users may not be able to make an informed choice about service provider because they do not have information, are not able to make a choice for themselves (e.g. intellectually disabled clients), or require the service urgently and so do not have the opportunity to make a choice.

The result of 'user choice' 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), it is becoming clear the NDIS is being used to end public sector provision of core disability services. For example, the NSW Government is transferring all disability services to the non-government sector.<sup>55</sup> The NSW Government will no longer 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>56</sup> It is a similar story in WA, where the NDIS is being used as a Trojan horse for privatisation. See Appendix 1 for a case study on public disability services in WA.

Williams and Dickinson identify one of the key elements missing from 'user choice' when they conclude that "health care in the United Kingdom, as in Australia, is more than a series of user-provider transactions and is instead informed, at least partly, by egalitarian principles and a collective sense of identity. Narratives of personalisation

<sup>50</sup> Meagher and Goodwin, p. 18.

<sup>51</sup> T. Carney, 'Conditional income transfers and choice in social services: Just more conditions and more markets?', in Meagher & Goodwin, pp. 341-366.

<sup>52</sup> R. Lynette-Smith and I. Martin McDonald, 'More competition may not be the answer to reforming the aged care system', *The Conversation*, 27 May 2016, <https://theconversation.com/more-competition-may-not-be-the-answer-to-reforming-the-aged-care-system-58155>, accessed 20/7/16.

<sup>53</sup> I. Williams and H. Dickinson (2015) 'Going it Alone or Playing to the Crowd? Individual Budgets and the Personalisation of Health Care', *Australian Journal of Public Administration*, Volume 75, Issue 2, June 2016, Pages: 149-158, p.151.

<sup>54</sup> Lynette-Smith and McDonald, op cit.

<sup>55</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 10/7/16.

<sup>56</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>, 10/7/16

ignore this cultural and ethical strain in civic society and therefore fail to address the social contract between state and society.”<sup>57</sup> In a similar vein, the Centre for Policy Development’s 2015 report found that the conclusion of user choice is unequal access to services and increasing inequality<sup>58</sup>. The Productivity Commission Inquiry must be broader than a simple economic analysis – it must take into consideration the kind of society Australians want to live in.

Equitable access was one of the key concerns of CPSU members working in the Department of Human Services. Just a few of the nearly 1,000 comments are below:

*The public service is set up to support people who cannot afford services. Privatising any part of these public services will see those who need them most unable to use them as there will be costs and charges.*

*Remain impartial, offer a continued ethical decision process, not bound by revenue nor dollars, we don't discriminate, we aren't servicing one sector of society, the department is Australia wide therefore in theory the service provided at Broome should be the same as that provided in Hobart.*

*The application of consistent apolitical language and display mean we can provide support to all. Costs associated with targeting all demographics means it can be shared. Targeting small groups of Australians (disabilities, non-English backgrounds, remote areas) can be expensive, however we're able to share this cost. Communicating to Australians consistently demonstrates no bias in the work we do. Even not for profit organisations, aren't able to demonstrate consistency of service across Australia.*

*The private sector would not invest in technology or interpreters to provide basic information to this group. Centrelink has begun the process of providing much information in other languages. We also have a dedicated multicultural phone service to help customers. There are YouTube explanations in four languages and this work continues.*

*I work with the most vulnerable of the vulnerable. They are already finding it hard to navigate a system which is increasingly privatised such as job agencies. More privatisation will just leave these people more vulnerable to organisation who see the poor as another source to exploit for profit rather than making their lives better. The Job agency system is now more disparate compared to CES and people get lost in the system.*

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<sup>57</sup> I. Williams and H. Dickinson (2015) 'Going it Alone or Playing to the Crowd? Individual Budgets and the Personalisation of Health Care', *Australian Journal of Public Administration*, Volume 75, Issue 2, June 2016, Pages: 149–158, p.158.

<sup>58</sup> Centre for Policy Development (2015), *Grand Alibis: How Declining Public Sector Capability Affects Services for the Disadvantaged*, Centre for Policy Development, Sydney.



## e) privatisation does not improve quality of service provision

While the community rightly expects public services to be of high quality, the complexity in measuring outputs of the work delivered by the public service is well documented.<sup>59</sup> The Productivity Commission too acknowledges that quality may be difficult to measure in the context of the public service. It proposes that proxies, such as service outputs, might be used instead. This focus on outputs reflects the current obsession with ‘outcomes’ in the field of new public management and excludes the value of other factors that are equally important – for example equity<sup>60</sup>.

While it may be hard to measure, understanding the impact of privatisation on quality is not rocket science. O’Neill et al summarise the impact with a simple example from a study of nursing homes:

*If increasing quality raises costs more quickly than it does revenues, profits must fall as quality improves. In order to generate profits, for-profit homes tend to have lower costs and lower staff-to-patient ratios than nonprofit*

*facilities. Money diverted to shareholders and investors leaves less money to pay for staff, and in turn, having fewer or untrained staff is associated with lower quality.*<sup>61</sup>

The Job Network is the prime example of where, in the absence of other measures, outputs are used to assess the performance of the private sector in the delivery of a public good – that is, facilitating people into employment. Since outputs (i.e. the number of people placed in jobs) is the primary measure of performance and hence payment,<sup>62</sup> Job Network providers focus on assisting those job seekers who are easy to place, ignoring the ‘harder cases’ who require additional assistance and impose additional cost to get a foothold in employment.<sup>63</sup> For these people, quality outcomes (or for some, outcomes at all) are rarely delivered.

The failure of privatisation to improve the quality of public services is increasingly widely acknowledged. Even the chairman of the Australian Competition and Consumer Commission, a previous proponent of privatisation, has raised significant concerns<sup>64</sup>, stating that the introduction of contestability in the Vocational Education and Training sector was a poor policy that had wasted billions of dollars<sup>65</sup>.

### Vocational Education and Training

A notorious example of where privatisation has failed to improve service provision is the vocational education and training (VET) sector. Just as in the Job Network example, the VET sector has been subject to gaming and predatory practices by service providers.

There have been many reports<sup>66</sup> of training providers pressuring disadvantaged people to enrol in courses using incentives such as ‘free’ laptops, when the student may not have the capacity to complete the course. As the VET providers are funded according to enrolments and not course completions, training providers are incentivised to invest in marketing courses and enrolling students, rather than focusing on the quality of education.

<sup>59</sup> Stone (2014).

<sup>60</sup> Cook et. al. (2012), p. 147

<sup>61</sup> C O’Neill, C Harrington, M Kitchener, D Saliba (2003), ‘Quality of care in nursing homes: an analysis of relationships among profit, quality, and ownership’. Medical Care 2003; 41(12):1318–30. PMID: 14668664, quoted in A Ronald, M McGregor, C Harrington, A Pollock and A Lexchin (2016) ‘Observational Evidence of for Profit Delivery and Inferior Nursing Home Care: When Is There Enough Evidence for Policy Change Observational Evidence of For-Profit Delivery PLoS Med 13(4): e1001995. doi:10.1371/journal.pmed.1001995, p.4.

<sup>62</sup> L. Fowkes, ‘Rethinking Australia’s Employment Services’, Whitlam Institute, March 2011, p.6.

<sup>63</sup> Ibid.

<sup>64</sup> B. Potter, ‘ACCC’s Rod Sims ‘exasperated’ as privatisations ‘increase prices’, Australian Financial Review, 26 July 2016, <http://www.afr.com/news/economy/acccs-rod-sims-exasperated-as-privatisations-increase-prices-20160726-gqdyjv#ixzz4FYqniW4k>, accessed 27/7/16.

<sup>65</sup> S. Letts, ‘ACCC boss says privatisation costing consumers and damaging economic reform’, ABC Online, 26 July 2016, <http://www.abc.net.au/news/2016-07-26/accc-boss-says-privatisation-costing-consumers/7662194>, accessed 27/7/16.

<sup>66</sup> See for example, Kathy Lord, ‘Students “being deceived” by private training colleges, education brokers: legal centre’, ABC online, 18 February 2015, <http://www.abc.net.au/news/2015-02-18/students-being-deceived-about-training-cost-and-outcomes/6141726>, accessed 20/7/16.

The costs of courses have risen since the privatisation of VET, and to fund their education, the student is encouraged to take out a VET-HELP loan to pay for the course. In many cases students have been left with a large debt for a course that they did not complete, or one that not give them the skills they need. It has been suggested that many of the students with a VET-HELP debt will never earn above the repayment threshold and so will never pay back the debt to the commonwealth government. While the private VET providers have made hundreds of millions of dollars out of the privatisation of vocational education, the public TAFE system has suffered. In NSW, the number of enrolments at TAFE has fallen by 60,000 since 2012, forcing the state government to freeze TAFE fees in a bid to win back students.<sup>67</sup> The workers in the TAFE sector have also suffered, with thousands made redundant and campuses closing.

It is clear that privatisation has done nothing to improve VET provision. However, it has been successful in funnelling millions of dollars into the private sector and saddling individuals with debt that in many cases they will never be able to repay.<sup>68</sup>

Research has found that the context in which the activity occurs is also an important influencer of quality – that is, the public/private mix will influence the outcome. For example Ronald et al comment that:

*In predominantly for-profit environments, some not-for-profit groups, despite their mandate, operate more as competitive market entities, with the focus often shifting towards increasing revenues at the expense of quality. Conversely, in jurisdictions dominated by the non-profit or public sector, overall quality for the whole region is generally found to be better, including care delivered in for-profit nursing homes. One interpretation is that the predominantly public sector raises the bar for all facilities, thus mitigating the effect of profit-making on quality. Such findings, rather than refuting the plausibility of the observed association, speak to various predisposing and mitigating contextual factors.*<sup>69</sup>

Ronald et al go on to conclude that “additionally, where comparisons of quality have subdivided nonprofit ownership into governmental (publicly owned) and nonprofit groups, there is often a hierarchy of outcomes, whereby public models are superior to both for-profit and nonprofit models and for-profit models are inferior to public and nonprofit owned organizations.”<sup>70</sup>

How to improve quality of service provision has been considered in detail in the Australian context. For example, in 2010, then Secretary of Prime Minister and Cabinet Terry Moran recommended that quality could be enhanced by ensuring that the public service is given every opportunity to be high performing. This has been defined as a public service that:

1. “Meets the needs of citizens;
2. Provides strong leadership and direction;
3. Contains a highly capable workforce; and,
4. Operates efficiently at a consistently high standard.”<sup>71</sup>

However, a multi-faceted approach that provides the necessary inputs to ensure the best possible outcomes is not the current focus of government. Rather, the commonwealth public service has been subject to decades of funding cuts through the efficiency dividend<sup>72</sup>; more than 17,000 jobs have been lost since the Coalition was elected in

<sup>67</sup> E. Bagshaw, ‘TAFE: NSW Skills Minister John Barilaro slams federal government on education policy’, 4 February 2016, <http://www.smh.com.au/national/education/tafe-nsw-skills-minister-john-barilaro-slams-federal-government-on-education-policy-20160202-gmjnlz.html>, accessed 20/7/16.

<sup>68</sup> For a detailed case study of the impact of privatisation on the VET sector, see the ACTU submission to this inquiry.

<sup>69</sup> A Ronald, M McGregor, C Harrington, A Pollock and A Lexchin (2016) ‘Observational Evidence of for Profit Delivery and Inferior Nursing Home Care: When Is There Enough Evidence for Policy Change Observational Evidence of For-Profit Delivery PLoS Med 13(4): e1001995. doi:10.1371/journal.pmed.1001995, p.7.

<sup>70</sup> *Ibid.*, pp. 7-8.

<sup>71</sup> T. Moran (2010) *Ahead of the Game: Blueprint for the reform of Australian government administration*, Advisory group on reform of Australian government administration, Commonwealth of Australia, Canberra, p.16.

<sup>72</sup> N. Horne (2012) *The Commonwealth efficiency dividend: an overview*, Australian Parliamentary Library Background Note, Department of Parliamentary Services, Canberra.

September 2013; and, the government has taken a very hostile approach towards employees through bargaining. It has been a similar story at the state government level, with governments imposing efficiency dividends, 'staffing freezes', redundancies, and outsourcing services.

## f) profit focus affects quality by lowering wages and working conditions

Labour costs are a major component of the cost of government service provision. For outsourcing to be financially viable for the private or not-for-profit sector, it requires that the combined cost of employee's wages, operational costs and the profit be less than what public sector provision would cost.<sup>73</sup> This often means that cost savings come from driving down wages and conditions, not improving the quality of services. Competition that focuses excessively on reducing the costs of running these services may lead to the employment of casuals and contractors, and poorly trained labour.<sup>74</sup>

### Contractors vs employees in the APS

In the Commonwealth public service, published data about the use of casuals, labour hire and contractors is not readily available. The CPSU is concerned that the apparent growth in the use of contractors could equate to privatisation by stealth where contractors are hired to undertake large slabs of public work which normally would be done by APS employees at a greater cost and to a

lesser standard. ICT is an oft quoted example, namely because it is the one area where detailed study has occurred<sup>75</sup>. However the CPSU is also concerned that the budget structure of commonwealth departments and agencies is such that contractors are not counted in the same way against costs and are much easier to procure than hiring permanent employees.

The 2008 Gershon report noted the inverse relationship in ICT between cost and quality. It seems this continues with one member in the Department of Human Services commenting that:

*The fact is that the government has recently been using a greater number of contractors and that those contractors have for the most part proved to be unable to do the work we currently do effectively as they do not have an understanding of the context of the work they are doing. People from within the organisation in my role know not only the ICT but have a very deep understanding of the business we support. Requirements provided by the business teams are rarely adequate and without our knowledge there would be greater delays between a project being initiated and the changes being implemented. If we provided the same requirements provided to us to an ICT firm outside they would be unable to develop the required applications within the ridiculous timeframes that we are. I would doubt that they would do so more cost effectively.*

Members provided hundreds of examples of their concern over the use of contractors to do public service work. Some of their comments are below:

- *I have worked recently with Contracted Decision Makers and have found that while the quality of work is of a good standard, contractors choose the way they work to their contract regarding days/time etc. They can at any time become "unavailable". I have also been an external provider in the Job Services field. While there are effective outcomes,*

<sup>73</sup> Cook et. al. (2012), p.149.

<sup>74</sup> Lynette-Smith and McDonald.

<sup>75</sup> P. Gershon (2008), *Review of the Australian Government's use of Information and Communication Technology*, Department of Finance and Regulation, Canberra.

*often these providers are looking to make a profit in a tight funding arrangement and this can have a direct effect on the service to customers.*

- *A high number of contractors has resulted in re-work as the knowledge base is not held within the organisation.*
- *We have a massive amount of contract / labour hire staff in our area (IT) and permanent staff have identified areas where the contractors have intentionally caused an issue which meant that their services were required longer.*
- *The outsourced development of a computer system meant that a certain piece of work that can be completed in 9 minutes now takes over 40.*
- *DHS uses a private company to do real estate valuations as AVO no longer exists and this has resulted in lots of rework for DHS staff, customer dissatisfaction and large number of appeals.*
- *The Government Contracted Doctors have contributed to lengthy delays for DSP claims due to their unavailability.*
- *In Litigation, we dispensed with AGS- Australian Government Solicitors and outsourced to two legal firms, it means a conflict of interest in some cases, where these solicitors are acting for the same customer. It has also meant a delay in their understanding of our processes.*

Furthermore, the government is the sole buyer when public services are outsourced so this is not a genuinely competitive market. The market power of the one buyer is often used to get very low prices from suppliers. Prices can become so low that there are long-term costs. For example, many Australian charities and other not-for-profit bodies have been used to deliver low cost welfare services, but this has often been at the expense of program effectiveness or dynamic efficiency. Pricing is often too low to sustain adequate training, employ fully qualified staff, or to develop new service models.<sup>76</sup>

The experience of outsourcing from the Job Network is a classic example. Between 2003 and 2008, the Commonwealth put organisations such as Catholic Social Services Employment under growing pressure to reduce their costs while delivering employment outcomes. Fees paid for their services remained almost static while inflation and the cost of delivery rose.<sup>77</sup> A 2012 Government review into the Job Network's successor, Job Services Australia, also identified uncompetitive wages as a major issue, causing high staff turnover.<sup>78</sup> It is very clear that these circumstances have a direct impact on the quality of service provision.

### **g) the role of the public sector must be broader than contract manager**

The CPSU notes that the 2013 Harper Competition Policy Review recommended the creation of a 'human services intergovernmental agreement'. It proposed that each jurisdiction 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>79</sup>

<sup>76</sup> Centre for Policy Development (2015).

<sup>77</sup> L Fowkes (2011), 'Rethinking Australia's employment services', Whitlam Institute, Sydney, p.7

<sup>78</sup> 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.

<sup>79</sup> *Ibid.* p.26



The CPSU does not support this 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 public 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.

Separation of policy, funding, regulation and service delivery will not lead to a competitive 'public service market' or increase diversity of providers. 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>80</sup> Furthermore, this separation results in a disconnection of funding, policy and regulation from service delivery, in turn impacting the quality of services provided. What happened in the Department of Employment following the outsourcing of job services is a prime example of the impact a separation of policy and delivery has on all aspects of public service work.

### Department of Employment

Outsourcing has fundamentally changed the cultural and professional dynamic within the Department of Employment. Today, the Department's state offices are staffed with a majority of workers whose main function is 'contract management, stakeholder engagement and local labour market intelligence gathering'. They are responsible for liaising with, and monitoring, the contracted service providers.

As the memory of the CES has receded, so too has the institutional memory of the Department. Drawing from more than a decade working in employment services, academic Lisa Fowkes reported

that in the early years of outsourced employment services the high number of workers with former experience in CES ensured a workforce with the benefit of significant training in assisting jobseekers, case management and labour market management. Those workers also 'had a strong institutional, professional sense of public service ethics'<sup>81</sup>.

In the years immediately following privatisation, government contract managers working with the 'new' outsourced providers had hands on experience. Nearly twenty years later, *'now there's a new generation of managers who have never delivered services to people. They are obsessive about computer screens. This leads to perverse outcomes'*<sup>82</sup>.

The public sector disconnect from the outsourced services system is doubly reinforced by the prescriptive rules and processes for competitive tendering of government contracts. These processes minimise interaction between public sector managers and service providers, and shut down lines of communication in understanding how the system could operate most effectively during the contract renewal process. Constructive engagement with service providers on the expectations and requirements of the Department is virtually impossible. Llewellyn Reynders of VCOSS also commented that 'all lines of communication must be down' once the procurement process commences, and that peak bodies are not even allowed to discuss the process with providers in the industry.<sup>83</sup>

In fulfilling its roles as contract and market manager, the public sector is now completely disconnected from direct service delivery in employment services. It is removed from understanding

<sup>80</sup> Cook et. al. (2012), p.147

<sup>81</sup> Centre for Policy Development (2015), p. 40.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid*

best practice, as well as the challenges and pitfalls. The capabilities of the public sector to understand, and respond innovatively to, the complex challenges 'on the ground' are significantly eroded. This in turn impacts the development of high-quality policies addressing challenging labour market conditions and the persistence of disadvantage in the community.

The government's role must be broader than simply contact manager. Indeed, it must be broader than regulator. Firstly, a broad role ensures the wider public sector is directly connected to real-world service delivery and its associated challenges and experiences. Secondly, retaining a component of service delivery offers a benchmarking of outsourced services, in terms of costs and quality. Thirdly, it allows governments to maintain a 'credible threat' to external providers in the event that there is significant market failure. This could occur when uncompetitive behaviour, or systemically inadequate performance undermines government programs or solutions to the detriment of the community. Government would in this scenario have a foothold to re-build a more credible service response to such a systemic challenge.<sup>84</sup> Ultimately, however, the CPSU believes that service delivery is a core function of government, and that public services are the backbone of a fair and just society.

## h) the public sector provides protections including accountability and data security

Public accountability and transparency are eroded if services are no longer delivered by the public sector. Privately run services do not have the same requirements of disclosure to parliament and to the general public, nor do they have the same levels of independent oversight and audit. As Emeritus Professor Richard Mulgan has noted,

"contracting out inevitably involves some reduction in accountability through the removal of direct departmental and Ministerial control over the day-to-day actions of contractors and their staff."<sup>85</sup>

Andrew, Baker, and Roberts released a comprehensive report into the accountability of Australian private prisons in June 2016. They note that:

*...there is not sufficient evidence to support claims in favour of prison privatisation in Australia. As a consequence, it is our view that no further privatisations should take place before an appropriate level of information is made available to policy makers and the public in order to properly assess the impact of privatisation on the sector...While systems of accountability and performance measurement have become more sophisticated, there is still a lack of information in the public domain to enable proper scrutiny of these prisons. There also appears to be a trend towards increased performance monitoring within private prisons, but little of this information is made available to the public.*<sup>86</sup>

The report notes that prison contracts have not been made publicly available, and cost information in most cases is not available, including amounts paid to private prison contractors. How can the public make an assessment about the veracity of claims that privatisation improves performance when there is little information available? The report concludes that "a genuine comparison in terms of performance, cost and efficiency will only be possible once all prisons are subject to similar levels of public accountability, and this will require a genuine commitment to evidence-based prison policy reform."<sup>87</sup>

A lack of accountability decreases public confidence and increases risks of fraudulent activity in the use of public money. A 2012 Fraud Survey conducted by the NSW Auditor-General identified a growing trend in frauds in outsourced functions contracted to non-government organisations.<sup>88</sup> The New South Wales Independent

<sup>84</sup> *Ibid*, p.42.

<sup>85</sup> R. Mulgan, 'Contracting Out and Accountability', Discussion Paper 51, Graduate Public Policy Program, Australian National University, 1997, cited in P. Barrett AM, 'Some Issues in Contract Management in the Public Sector', 26 July 2000, p.4.

<sup>86</sup> J. Andrew, M. Baker and P. Roberts (2016), 'Prison Privatisation in Australia: the state of the nation', University of Sydney Business School, p. 4.

<sup>87</sup> *Ibid*.

<sup>88</sup> NSW Auditor-General (2012), Report to Parliament, Volume Seven, 2012 Fraud Survey, Audit Office of NSW, p.31.

Commission Against Corruption (ICAC) noted that “with agency controls under pressure and an environment in which large numbers of funding allocations are available, the situation is conducive to corruption.”<sup>89</sup>

Problems and risk factors identified as part of the ICAC investigations into the delivery of public services include:

- staff using government resources and money for their own benefit
- staff using funds to deliver a different service to the one contracted
- organisations receiving funding for the same service from multiple funders
- theft and inappropriate use of government funded assets
- services provided to favoured clients of the organisation’s manager
- collusion between government frontline staff and the organisation’s staff
- false reporting on service delivery<sup>90</sup>.

The NSW Parliamentary Committee on Outsourcing Community Service Delivery recommended that the NSW Auditor-General:

- Be given legislative authority to examine and audit the accounts of NGOs in receipt of government funding for the provision of housing, disability and home care services.
- Reports annually on the accounts and activities of NGOs operating in the housing, home care and disability sectors.<sup>91</sup>

Another example is provided (again) by the job services experience.

### **Job Services rorting**

According to ABC’s Four Corners, job agency employees are encouraged to look into the background of clients and identify those who can be classified into a disadvantaged category.

When they can’t find enough ‘disadvantaged’ jobseekers, at least one agency has been found to fraudulently upgrade them. The value of these jobseekers was highlighted in a 2005 government investigation into the Salvation Army in Victoria, which found clients were fraudulently upgraded to a “highly disadvantage classification”, which increased payments and bonuses for staff.

Another tactic used is known as ‘parking’, where you get a jobseeker in, you don't think there's much prospects of getting them an outcome, so you essentially try and do the minimum amount of compliance activities that are required with them.

Reports have indicated that fraud is rampant and that some providers routinely lodge false claims worth millions of dollars. Some organisations have already had to pay back more than \$41 million worth of false claims in the past three years.

The Government instituted an industry-wide inquiry that examined the extent to which one particular job placement fee was being abused. The audit identified a large number of cases where providers had inappropriately claimed a higher outcome fee. There have been some reports with up to an 80 per cent failure rate. The inquiry examined only one type of fee and just six months' worth of claims, but it still clawed back more than \$6 million.

<sup>89</sup> Independent Commission Against Corruption (2012), ‘Funding NGO Delivery of Services in NSW: A Period of Transition’, , p. 4.

<sup>90</sup> Independent Commission Against Corruption (2012), p.4.

<sup>91</sup> Committee on Community Services (2013), ‘Outsourcing Community Service Delivery – Final Report’, *Legislative Assembly of New South Wales*, p. 35.

CPSU members working in the Department of Human Services also expressed significant concerns about the need for accountability when dealing with sensitive personal data. Some of their hundreds of comments included:

*Security and privacy of information is better controlled within the public service. Giving it to an outside organisation predominantly driven by profit could lead to a compromise of this. Plus this is a highly legislative area that has many checks and balances that must be followed which are better suited to control by the public service.*

*Given the amount of customer information, i.e. personal information, placing this into the hands of private enterprise is asking for trouble. I believe most thinking people in the community want to know that their private information is secure, and utilised only for assessing entitlements to income support entitlement.*

*The APS conducts itself according to strict guidelines regarding privacy. What protocols would be in place to stop the private sector from "selling on" the information provided by our customers?*

*APS employees adhere to Legal, Privacy & Security Requirements, especially with consideration to customer communications:*

- *A New Tax System (Family Assistance)(Administration) Act 1999*
- *Electronic Transactions Act 1999*
- *Explanatory Memorandum to the Electronic Transactions Bill 1999*
- *Electronic Transactions Regulations 2000*
- *Freedom of Information Act 1982*
- *Privacy Act 1988*
- *Social Security (Administration) Act 1999*
- *Spam Act 2003*
- *Acts Interpretation Act 1901*
- *Administrative Appeals Tribunal Act 1975*
- *Australian Government Information Security Manual*
- *Evidence Act 1995*
- *Information Privacy Principles (to be replaced by the Australian Privacy Principles in March 2014)*
- *Privacy Amendment (Enhancing Privacy Protection) Act 2012*
- *Protective Security Policy Framework*

*Is the private sector going to adhere to the same rules?*

Member concerns about the level of accountability decreasing following privatisation are clearly well founded. Commercial-in-confidence provisions in contracts, costings kept secret from the public, and less parliamentary oversight coupled with perverse incentives that prioritise profit-making above good public outcomes are a recipe for disaster, as has been exemplified by the Job Services debacle. If public money is being directed to private hands, the community deserves to have full access to information about how that money is being spent.



## Conclusion

The CPSU supports efficient use of public resources, however, , it is abundantly clear from the evidence above that the starting point for this Inquiry – that the public service needs to be privatised to improve quality – is not the right one.

In their study of the cost and quality impact of large scale failure of the privatised nursing home sector in the US, Ronald et al<sup>92</sup> ask “at what point is it is time to shift policy direction based on the available evidence?”. The directions given to the Productivity Commission for this Inquiry ask that it completely ignore the evidence. It is our view that collecting and evaluating the evidence must be at the heart of this Productivity Commission Inquiry. Should this occur, we believe that little evidence will be found to support the premise of this Inquiry: that privatising government services will increase quality and choice<sup>93</sup>. The evidence suggests quite the opposite. Our submission shows that over time, privatisation leads to market concentration, causing inequality of access, a drop in quality of service provision<sup>94</sup>, cost shifting from government to the ‘consumer’<sup>95</sup> and to workers (via lower wages and conditions), an increase in prices and in some cases instability and collapse (in the Australian VET and childcare sectors and the US nursing home sector). What then is the cost to ‘consumers’, workers, the economy and government?

If increased user choice is the new holy grail, the Productivity Commission should consider how choice and influence might be given to ‘consumers’ within the existing system. The evidence is that people don’t easily change providers (and may not be able to) simply because they are unhappy with the quality of service provided or even the price – the financial sector provides the perfect example<sup>96</sup>. The public service has worked on how to better engage citizens with the services it provides – while just a starting point, the Moran Review of 2010 provides some ideas as to how citizens could be more engaged in public services.

We would welcome a genuine, evidence-based discussion about this and other aspects of public service delivery. But the Turnbull government and the Productivity Commission’s inquiry to justify further privatisation of public services is a farce, and an effort to push an agenda which benefits business at the expense of our community.

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<sup>92</sup> op cit, p.7.

<sup>93</sup> Centre for Policy Development (2015), p.44.

<sup>94</sup> J. Forder and S. Allan (2014) ‘The impact of competition on quality and prices in the Englishcare homes’ *Journal of Health Economics* 34, pp.73–83.

<sup>95</sup> Williams and Dickinson (2015).

<sup>96</sup> S Elsworth, ‘Switching Banks if really not that hard’, *News.com.au*, July 11, 2015, <http://www.news.com.au/finance/money/wealth/switching-banks-really-is-not-that-hard/news-story/a4ffac8809107437b53be3643a4adde6>, accessed 20/7/2016.

## Appendix 1

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## Introduction

The Community and Public Sector Union/Civil Service Association (**CPSU/CSA**) is a Western Australian (**WA**) trade union that represents 630 occupations in over 130 public sector agencies. In making work life better for over 40,000 people in WA, we are guided by our:

- **Vision** for a fair and just society built through the provision of quality public services;
- **Mission** to organise workers to win better jobs, stronger communities, build an inclusive fairer society and a sustainable future; and
- **Values** of collectivism, solidarity, compassion, professionalism, equality, fairness, sustainability and social justice.

We have consulted widely with our membership and stakeholders in compiling this response, including our members who work for the Disability Services Commission (**the Commission**) in areas such as: front-line accommodation and service delivery, policy and programs, education, administration, human resource, funding and finance.

We invite the Productivity Commission to review the CPSU/CSA submission to the Human Services: Identifying sectors for reform inquiry dated 29 April 2016, which addresses issues of quality, equity, efficiency and accountability and responsiveness and makes recommendations to ensure processes of privatisation engage, are transparent and those affected are appropriately supported.

### 1.1 Our members

Announced in October 2013, our members fundamentally disagree with the 'transition' of the Commission's group home accommodation to non-government providers. We recognise that there are critical challenges confronting disability care and support in Australia, and that a high quality, high capacity and sustainable workforce are essential to any solution. For people with disability, skilled and well-supported workers, employed with decent working conditions and job security, can ensure care is consistent, reliable and responsive.<sup>97</sup>

Our members, front-line staff in the Commission's group home accommodation network, work to support and assist people with intellectual disability. Social Trainers:

- Accompany individuals to medical/specialist appointments
- Carry out and record outcomes of health checks and treatments
- Give medications and treatments in accordance with medication management policy and manual
- Develop, implement and support involvement in well-being activities and programs, including sports, exercise and leisure

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<sup>97</sup> Cortis, Natasha, Gabrielle Meagher, Sharni Chan, Bob Davidson, and Toby Fattore. "Building an industry of choice: Service quality, workforce capacity and consumer-centred funding in disability care." *Final report prepared for United Voice, Australian Services Union and Health and Community Services Union, Social Policy Research Centre, University of New South Wales, Sydney* (2013).

- Support and provide training in all areas of personal care
- Support people with intellectual disability to maintain regular communication and contact with families and significant others
- Support people with intellectual disability to present a positive image
- Develop and implement routines, encourage engagement and choice-making
- Develop positive behaviour support plans.

## **1.2 Our beliefs and principles**

### **The role of government in delivering human services**

We believe that robust, dynamic and quality human services are the foundation of a fair and just society. These services should be delivered by government and should be described as public services, specifically:

- Public services extend opportunities, protect the vulnerable and improve everyone's quality of life. They are essential to our economic prosperity and bind us together as a society.
- Government can and does deliver efficient, quality, equitable and responsive public services.
- Public servants should be independent and able to provide advice without fear or favour. Job insecurity is contradictory to improving performance and effectiveness in the public sector and therefore in the delivery of public services.
- There is a need for planned and well-managed public sector reform, with an assessment of the efficiency and effectiveness of all current systems before increasing market completion is considered.
- Public services, already struggling to meet demands, are being further undermined through funding and job cuts.
- The public sector has a unique and positive opportunity to increase employment of underutilised segments of the population, including; mature people, women, Indigenous Australians, Lesbian, Gay, Bisexual, Transgender, Intersex and Queer people, people from culturally and linguistically diverse backgrounds, and people with disabilities.

### **Public services for the public good**

Privatising has and continues to be promoted by governments and associated parties on the basis that it increases competition and efficiency, reduces prices, enhances choice, and relieves governments of budgetary stress. However, there is an absence of firm evidence that the community is better off after privatising in contrast to the raft of evidence that shows the public and the government are worse off, regardless of what type of privatising process is used.

We stand for public services, assets and infrastructure being funded and delivered on the basis of need, quality, and democratic accountability; not on the basis of profit.

We recognise the shared values that we have with many not-for-profit and non-government organisations that provide public services, and we recognise that historically many of these organisations provided these services before Government did. We acknowledge their expertise and knowledge, new solutions, and community links held beyond the public sector. However, we believe the current WA state government uses outsourcing to not-for-profit or non-government organisations to:



- drive down wages and conditions;
- avoid taking direct responsibility for the provision of public services in 'difficult' fields; and
- as a precursor for the outsourcing and privatisation of public service provision to for-profit private sector companies.

We believe well-funded and strong public services play an important role in keeping down the rate of inflation for the overall costs of the service sector. Further shifts to a 'user-pays' model in the provision of public services, and the weakening of the publicly-funded option through privatisation will ensure inequitable outcomes and inefficient provision of services.

We disagree with two-tiered systems in health, education and other public services that comes about through having one option for those who earn less and the other for those who earn more. Such a system will inevitably result in increased costs and substandard service for the lower tier.

We believe that the public sector is the best provider of human services to the WA community when considering all factors including cost efficiency, equity, and quality of service, transparency, accountability and responsiveness, with outsourcing and privatisation undermining these principles and values.

There is now a growing body of literature which supports the view held here that privatisation is an important instrument of neo-liberal policy. This literature counters the traditional justifications for privatisation (improved efficiency;<sup>98</sup> increased quality; greater productivity; eliminating political interference;<sup>99</sup> increased innovation;<sup>100</sup> enhanced decision-making;<sup>101</sup> lower prices and costs;<sup>102</sup> and reduced capital-labour ratios<sup>103</sup>) with the following arguments:

- That privatisation is not necessary or sufficient for improving the efficiency of government entities and services;<sup>104</sup>
- Privatisation public services measure efficiency through the management and operating environment and not by its ownership;<sup>105</sup>
- Publicly-owned services perform as well or better than those that are privately-owned;<sup>106</sup>
- The notions of competition and benefits of efficiency do not apply in the same way as a market with multiple service providers;<sup>107</sup>
- Pro-privatisation arguments fail to compare public and private entities on a like-for-like basis and when this is done it actually shows the public sector outperforming the private sector;<sup>108</sup>

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<sup>98</sup> Cook, Quirk, and Mitchell, "The Impact on Community Services of Staff and Service Reductions, Privatisation and Outsourcing of Public Services in Australian States," 12.

<sup>99</sup> Stephen Martin and David Parker, *The Impact of Privatisation: Ownership and Corporate Performance in the UK*, Industrial Economic Strategies for Europe (London: Routledge, 1997).

<sup>100</sup> Ibid

<sup>101</sup> Cook, Quirk, and Mitchell, "The Impact on Community Services of Staff and Service Reductions, Privatisation and Outsourcing of Public Services in Australian States," 106.

<sup>102</sup> Michael Lambert, "NSW Financial Audit 2011," Financial Audit (Sydney: NSW Treasury, September 2011), [http://www.treasury.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0014/21605/NSW\\_Financial\\_Audit\\_Report\\_Part\\_2011-Full\\_pdf.pdf](http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0014/21605/NSW_Financial_Audit_Report_Part_2011-Full_pdf.pdf).

<sup>103</sup> Friedrich Schneider, "Privatisation in OECD Countries: Theoretical Reasons and Results Obtained," August 2003, <http://www.econ.jku.at/members/Schneider/files/publications/PrivatizationOECDcorr.pdf>.

<sup>104</sup> John Quiggin et al., "The Privatisation of ACTEW: The Fiscal, Efficiency and Service Quality Implications of the Proposed Sale of ACT Electricity and Water" (The Australia Institute, December 1998), x, <http://www.tai.org.au/node/883>.

<sup>105</sup> Ibid

<sup>106</sup> Ibid

<sup>107</sup> Stephen Koukoulas and Thomas Devlin, "Nothing to Gain, Plenty to Lose: Why Government, Households and Businesses Could End up Paying a High Price for Electricity Privatisation" (The McKell Institute, December 2014), 9.

<sup>108</sup> Ibid., 13.

- Publicly-owned services are more willing to engage in long-term planning which leads to better infrastructure and maintenance;<sup>109</sup>
- Transferring business to the private sector can be and has been accompanied by changes to the services in order to make a profit which undermines the argument of greater efficiency when it no longer services the entire public;<sup>110</sup>
- Monies earned through privatisation are less than the cost of the loss of the public asset and the associated fiscal costs – it ends up costing the government and the public more;<sup>111</sup>
- Service quality has deteriorated in many instances following privatisation due to the tendency for the private sector to invest less than the public sector due to market discipline;<sup>112</sup>
- Government needs to fund heavy regulation to monitor the quality of services provided by the private company which is not often factored into the cost;<sup>113</sup>
- The accountability and transparency of the service is reduced when privatised as the “discipline of the ballot box” is removed and often there is reduced availability of public scrutiny and authority of oversight bodies when the private company takes control;<sup>114</sup>
- Privatisation can contribute to price increases due to the increased manager to worker ratio and the over-value bid cost being passed onto consumers;<sup>115</sup>
- Studies have consistently shown that for healthcare, public provision is more efficient, effective, and results in better health outcomes than private provision;<sup>116</sup> and
- The money obtained by government through privatisation is at the expense of future revenue flows and is analogous to a tradesperson selling their tools in order to make up for a temporary budget shortfall;<sup>117</sup>

## 2 Executive summary

### 2.1 Scope of our response

The objective of our response to the Human Services: Identifying sectors for reform inquiry (**the Inquiry**) is to present a problem-orientated case study where the principles of competition, contestability have been applied to the notion of user choice in the provision of public (human) services, specifically disability services, and demonstrate the outcomes when assessed against attributes of service quality, equity, efficiency, accountability and responsiveness – are well below that which is acceptable.

In line with the inquiries issues paper, our accommodation services privatisation case study provides information on the:

- Pathway taken to achieve reform

<sup>109</sup> Ibid., 14.

<sup>110</sup> Cook, Quirk, and Mitchell, “The Impact on Community Services of Staff and Service Reductions, Privatisation and Outsourcing of Public Services in Australian States,” 107.

<sup>111</sup> John Quiggin, “Does Privatisation Pay?,” *The Australian Economic Review*, no. 2nd Quarter (1995): 23 – 42.

<sup>112</sup> Cook, Quirk, and Mitchell, “The Impact on Community Services of Staff and Service Reductions, Privatisation and Outsourcing of Public Services in Australian States,” 108.

<sup>113</sup> Ibid

<sup>114</sup> Ibid., 109.

<sup>115</sup> David Richardson, “Electricity and Privatisation: What Happened to Those Promises?,” Technical Brief (The Australia Institute, April 2013), 1, <http://www.tai.org.au/content/electricity-and-privatisation-what-happened-those-promises>.

<sup>116</sup> Jane Lethbridge, “Why the Private Sector Kills More Than It Cures: Countering Arguments in Favour of Privatisation” (Public Services International Research Unit, February 2013), 8.

<sup>117</sup> Cook, Quirk, and Mitchell, “The Impact on Community Services of Staff and Service Reductions, Privatisation and Outsourcing of Public Services in Australian States,” 12.

- Effectiveness of policy in achieving best-practice outcomes for quality, equity, efficiency, responsiveness and accountability
- Decision making, including willingness and capacity of users to exercise informed choice
- User-orientated, timely and accurate information, including access to expertise
- Outcomes experienced by service recipients, including human cost.

We recognise the absolute right of self-determination for people with disabilities, therefore it is not within the scope of our response to discuss, consider or evaluate the decision-making capacity or otherwise of any individual. Rather, our case study utilises consolidated information on decision-making from across the pathway to achieve reform in Disability Services in WA and our own transition process review.

We support the use of language that promotes equality, including equality for people with disability. Language shapes the way that we view the world. The words that we use can influence attitudes and create opportunity for social change. In this submission, in line with presenting the social model of disability in our written work and advice from People with Disability Australia,<sup>118</sup> where possible, we have used 'person first language' which means we acknowledge the person before their disability.

## 2.2 Case study – 'Transitioning' disability accommodation services

In October 2013, the then WA Disability Services Minister, Helen Morton, announced that the Commission intended to transfer 60 per cent of its group home accommodation to non-government providers, affecting 300 residents and 500 public sector jobs. Transitional and emergency accommodation services, and a smaller supported community living service, were to continue to be provided by the Commission.<sup>119</sup>

The decision to transition some Commission accommodation to non-government providers was posited on a number of changes in the way the WA government provides services to people with disability, including:

- The introduction of the National Disability Insurance Scheme (**NDIS**); and
- The Delivering Community Services in Partnership Policy.

With the transition process well underway, our members continued to raise concerns regarding both the consistency and implementation of decision-making for people with disabilities in WA group home accommodation. As a result, in November 2015, we initiated a review into the transition process (**the Review**), specifically the engagement of people with disabilities in decision-making as part of the transition process.

The reviews findings, drawn from semi-structured interviews with family members of people with disabilities and where possible, their key workers and a review of both the available literature and policy relating to the provision of disability services included:

- Evidence of limited engagement of people with disability in decision making by the Commission.
- Examples of poor communication between the Commission's Transition Officers' and people with disability in group home accommodation;
- Limited information for families on whether individual decision making capacity had ever been determined;
- Inconsistency in the application of supported decision making; and

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<sup>118</sup> Section, Students'. 2016. "Terminology Used By PWDA". *Pwd.Org.Au*. <http://www.pwd.org.au/student-section/terminology-used-by-pwda.html>.

<sup>119</sup> Helen Morton (Minister Disability Services, Western Australia), 2013. *Restructure Is A Step Towards NDIS*. <https://www.mediastatements.wa.gov.au/Pages/Barnett/2013/10/Restructure-is-a-step-towards-NDIS-.aspx>.

- Contrary to the Commission's responsibility to regard people with disabilities as de-facto decision-makers where possible, some evidence that the Commission instead primarily regarded families as decision makers.

The review made several key recommendations, including calling for greater:

- **Engagement:** In the context of the transition process, that the engagement of people with disabilities in group home accommodation be described and detailed, with people with disabilities empowered to make supported decisions where possible.
- **Transparency:** In general terms, the Commission should report when they are exempting people with disabilities from decision making and under what legal instrument.
- **Support:** The Commission reports on the supports they are implementing for people with disabilities to assist and facilitate supported decision-making.

The case study is provided in detail in the next section of this submission.

### 3 Case study – 'Transitioning' accommodation services

#### 3.1 Synopsis

The following is a case study of the changes to the Commissions accommodation services, in particular decision-making and the involvement of people with disabilities during the transition of the Commissions group homes to private accommodation providers. This case study does not seek to make generalisable truth claims; rather it presents an examination of semi-structured interview data gathered between November 2015 and January 2016 with a view to exploring the issues of decision-making in the context of accommodation support service choice for people with disabilities in WA. It also places self-determination, choice and decision making within a review of existing national and international legal and policy frameworks.

#### 3.2 Methodology

##### Review objectives

The purpose of the review was to examine the consistency of the Commissions approach to decision-making during the process of privatising (transitioning) accommodation services to non-government accommodation providers.

There was one review objective:

1. Determine the effectiveness and consistency of both the access to information and decision-making for those affected during the transition process.

There were two central questions to the review:

1. How were people with disabilities engaged in the transition process?
2. How was decision-making facilitated during the transition process?

##### Data collection

This review was primarily conducted via a secondary review of available data and literature, including the Commissions information about accommodation supports and the transition process. During the review, decision-making was discussed at forums, meetings and events. Information obtained from these events was used to inform the review.

The review conducted 24 semi-structured interviews with families who had loved ones living in supported accommodation provided by the Commission and key workers (union members), identified by families, who had working relationships with people residing in the Commission's group homes in WA. The participants were reached via snow ball sampling, with key workers identified by families. The participants provided additional documentary information which was also reviewed. The review asked nine questions regarding information, consultation and process.<sup>120</sup> Interviews were not recorded; instead detailed hand written notes were taken.

Narrative analysis of the language used publicly by the Commission to describe "decision-makers" was also undertaken.

Verbal consent was obtained from the interview participant before, during and after the semi-structured interviews. To protect confidentiality, the participant's name and other identifying information is not revealed in this study.

### 3.3 Disability Services Commission

The Commission is the State Government agency responsible for advancing opportunities, community participation and quality of life for people with disability. Established in 1993 under the *Disability Services Act 1993*, the Commission provides a range of direct services and support and also funds non-government agencies to provide services to people with disability, their families and carers. The Commission also partners and collaborates with disability sector organisations, business and government, and other stakeholders to improve participation, inclusion and access for people with disability across the community.

In 2014, WA reached agreement on participation in a two-year trial of the National Disability Insurance Scheme (NDIS) using two different models:

#### WA My Way

Built upon the WA Local Area Coordination program, My Way supports people with disability to identify their strengths and needs, plus any goals or aspirations they would like to start working towards, and capture these elements in their My Way plan. Participants are supported to explore pathways and strategies to reach the goals outlined in their plan and choose the services that best suit their needs.<sup>121</sup>

#### NDIS

As an insurance scheme, the NDIS takes a lifetime approach, investing in people with disability early to improve their outcomes later in life. The NDIS helps people with disability to: access mainstream services and supports, access community services, maintain informal support arrangements, receive reasonable and necessary funded supports. The scheme, currently in the trial stage, proposes the use of person-centred planning and individualised funding to identify and meet the needs and preferences of the individual. A guiding principle of the NDIS recognises that individuals with a disability "... have the same right as others to develop, pursue their goals, participate in society, have respect and dignity, exercise choice and control, be equal partners in decisions that affect their lives" (emphasis added).<sup>122</sup>

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<sup>120</sup> Appendix 1

<sup>121</sup> Disability.wa.gov.au, 'WA NDIS My Way Model', 2015, <http://www.disability.wa.gov.au/wa-ndis-my-way/wa-ndis-my-way/wa-ndis-my-way-model/>.

<sup>122</sup> The Treasury,. 2013. *DisabilityCare Australia*. Canberra: Australian Government, 16.



The new Minister for Disability Services, Donna Faragher, recently announced that the existing WA NDIS trials will be extended for a further 12 months to July 2017, as plans progress for further expansion into new local government areas.<sup>123</sup>

### 3.4 Self-determination

Self-determination, the combination of skills, knowledge, and beliefs that enable a person to engage in goal-directed, self-regulated, autonomous behaviour, has become an important part of education and related services for people with disabilities.<sup>124</sup> This emphasis, including in the development of the NDIS, has come about as a result of several factors, including a changing view of disability, legislation and research findings. As a result, adults with intellectual disability are increasingly encouraged to take control of their lives through a range of goal-setting, choice and decision-making opportunities, for example.

Combined, the elements of self-determination may include:

- **Freedom** to have control and choice;
- **Authority**, including meaningful and respected whole-of-life control;
- **Support** and access to both informal and formal support networks;
- **Responsibility**, including ensuring people living with disability are not passive recipients of support, but are assumed responsibility like any other citizen; and
- **Knowledge** that the person with a disability is the expert.<sup>125 126</sup>

### 3.5 Decision-making

The starting assumption is all individuals have capacity to make decisions and exercise choice, regardless of disability, unless proven otherwise. Capacity is decision-specific, with national and international legal and policy frameworks supporting this view.

#### The Australian National Standards for Disability Services

In 2014, WA adopted National Standards for Disability Services that promote nationally consistent quality standards for the disability services sector.<sup>127</sup> Implementation of the standards began on 1 July 2014 and since then the Standards have applied to all services funded or delivered by Commission.

There are six National Standards that apply to disability service providers here in WA:

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<sup>123</sup> Donna Faragher (Minister for Disability Services, Western Australia),. 2016. *WA Enters Next Phase Of NDIS*. <https://www.mediastatements.wa.gov.au/Pages/Barnett/2016/07/WA-enters-next-phase-of-NDIS.aspx>.

<sup>124</sup> Algozzine, Bob, Diane Browder, Meagan Karvonen, David W. Test, and Wendy M. Wood. "Effects of interventions to promote self-determination for individuals with disabilities." *Review of Educational Research* 71, no. 2 (2001): 219-277.

<sup>125</sup> Robbi Williams, 'Individualised Funding: A Summary Review Of Its Nature And Impact, And Key Elements For Success', *Interaction: The Australian Magazine On Intellectual Disability* 22, no. 1 (2015): 5, <http://search.informit.com.au/documentSummary;dn=200810288;res=IELAPA>.

<sup>126</sup> Peter Kinsella, *Supported Living: The Changing Paradigm-From Control To Freedom*, ebook, 1st ed., 2001, <http://www.supportedliving.org.au/site/wp-content/uploads/From-control-to-freedom-Peter-Kinsella.pdf>.

<sup>127</sup> Department of Social Services,. 2013. *National Standards for Disability Services*. Canberra: Australian Government, [https://www.dss.gov.au/sites/default/files/documents/06\\_2015/nsds\\_full\\_version.pdf](https://www.dss.gov.au/sites/default/files/documents/06_2015/nsds_full_version.pdf)

1. **Rights:** The service promotes individual rights to freedom of expression, self-determination and decision-making and actively prevents abuse, harm, neglect and violence.
2. **Participation and Inclusion:** The service works with individuals and families, friends and carers to promote opportunities for meaningful participation and active inclusion in society.
3. **Individual Outcomes:** Services and supports are assessed, planned, delivered and reviewed to build on individual strengths and enable individuals to reach their goals.
4. **Feedback and Complaints:** Regular feedback is sought and used to inform individual and organisation-wide service reviews and improvement.
5. **Service Access:** The service manages access, commencement and leaving a service in a transparent, fair, equal and responsive way.
6. **Service Management:** The service has effective and accountable service management and leadership to maximise outcomes for individuals.

Each of the six standards is accompanied by a statement of intent and “indicators of best practice”, with the intention to provide guidance on the activities and operational requirements to support the standard. The table below shows the intent of the “Rights” standard and its accompanying decision-making specific indicators of practice.

#### Standard one – rights, and indicators of practice

Statement of intent - Rights <sup>128</sup>	Indicators of practice <sup>129</sup>
<p>The intent of this standard is to promote ethical, respectful and safe service delivery which meets, if not exceeds, legislative requirements and achieves positive outcomes for people with disabilities. This standard has a focus on particular rights such as self-determination, choice, privacy and freedom from discrimination.</p>	<ul style="list-style-type: none"> <li>• The service supports active decision-making and individual choice including the timely provision of information in appropriate formats to support individuals, families, friends and carers to make informed decisions and understand their rights and responsibilities.</li> </ul>
<p>The standard recognises people’s inherent right to freedom of expression and the right to make decisions about and exercise control over their own lives. It reinforces the fundamental right of people with disabilities to have respect and dignity. This includes the dignity of risk -the right to choose to take some risks in life.</p>	<ul style="list-style-type: none"> <li>• The service supports individuals with information and, if needed, access to legal advice and/or advocacy.</li> <li>• The service recognises the role of families, friends, carers and advocates in safeguarding and upholding the rights of people with disability.</li> </ul>

<sup>128</sup> Ibid., 11.

<sup>129</sup> Ibid

### UN Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities considers that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them. Specifically, the States Parties to the present Convention recognise the following:

- the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices; and
- that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them.<sup>130</sup>

Australia ratified the Convention on 17 July 2008. By signing and ratifying the convention, Australia universally demonstrated support for the convention's requirement that countries provide for the full inclusion of people with disability in the community to create conditions that enable people to live independently should they choose.

### Australian Law Reform Commission inquiry

In August 2014, The Australian Law Reform Commission (ALRC) published its final inquiry report '*Equality, Capacity and Disability in Commonwealth Law*'.<sup>131</sup> The ALRC's Terms of Reference were to undertake "... a review of equal recognition before the law and legal capacity for people with disability".

The ALRC considered 'how maximising individual autonomy and independence could be modelled in Commonwealth laws and legal frameworks'. In concluding, the ALRC recommended that reform of relevant Commonwealth; state and territory laws should be consistent with the following National Decision-Making Principles (**the Principles**):

- **Principle 1:** The equal right to make decisions

All adults have an equal right to make decisions that affect their lives and to have those decisions respected.

- **Principle 2:** Support

Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.

- **Principle 3:** Will, preferences and rights

The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.

- **Principle 4:** Safeguards

Laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including preventing abuse and undue influence.

The ALRC recommended that these principles be underpinned by Supporting Guidelines which clearly affirm that 'persons who require decision-making support should be supported'.<sup>132</sup>

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<sup>130</sup> *Convention on the Rights of Persons with Disabilities*, New York, 13 December 2006, United Nations, *Treaty Series*, vol. 2515, No. 15, p.3, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-15&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en)

<sup>131</sup> Australian Law Reform Commission, 2014. *Equality, Capacity And Disability In Commonwealth Laws*. Sydney: Australian Government.

<sup>132</sup> *Ibid.*, 11

### Disability Services Commission Strategic Plan 2011-2015

The Commissions fourth strategic plan sets out the direction for disability services in WA. Within the plan,<sup>133</sup> the commissions Strategic Directions commit to people with disability, their families and carers being at the centre of decision-making. To do this, the Commission will:

- Support people with disability, their families and carers to be involved in decision-making in relation to the services they receive; and
- Aspire to a Person Centred Approach – ‘a way of supporting people with disability that keeps the person at the centre of decision making across planning, funding and support and service arrangements’.

### 3.6 Changes to disability accommodation services in WA

In November 2013, the Commission published *Information about changes to Disability Services Commission Accommodation Services*.<sup>134</sup> The fact sheet, which uses language about ‘families’, ‘stakeholders’ and ‘individuals’ interchangeably, provided key information about the transition of 60 per cent of the Commissions accommodation services to the non-government sector, specifically:

- The transition will be facilitated by the Commission in partnership with each person, their family and/or key stakeholders and the non-government accommodation provider.
- The transition will begin with consultations with each person who lives in Commission accommodation, their families and/or key stakeholders about their future accommodation services.
- People living in Commission accommodation, their families and/or key stakeholders will choose which non-government provider will manage their accommodation service in the future.
- People may choose to stay with current housemates in the same house or move with them to another, or choose an individual option – in each case they will receive their future services from a non-government provider.
- Commission staff in a Transition Project Team will consult each person living in Commission accommodation and their family and/or key stakeholders to discuss their preferences for their future accommodation support services.
- Once the person, their family and/or key stakeholders have decided which provider they want to manage their accommodation support, the Transition Project Team will work with the person, their family and/or key stakeholders and representatives from non-government providers to develop a transition plan. The plan aims to make sure the transition process is tailored to meet the needs of the individual or individuals involved.
- The Commission’s accommodation service and direct care staff will be very much involved in the transition process, ensuring details of the individuals needs are passed onto the new staffing group and, where considered necessary, will work alongside the new staff while both the individuals and the new staff get to know each other.
- The Commission is committed to working with staff and unions about the changes.

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<sup>133</sup> Disability Services Commission,. 2011. *Strategic Plan 2011-2015*. Perth: Government of Western Australia.

<sup>134</sup> Disability Services Commission,. 2013. *Information About Changes To Disability Services Commission Accommodation Services*. Perth: Government of Western Australia.

### 3.7 The transition process

The transition process,<sup>135</sup> which commenced in February 2014, consists of the following six key stages:

1. Selection for transition
2. Selection of transition pathway
3. Selection of non-government provider as a house
4. Transition planning as a house
5. Selection of non-government provider and transition planning with an individualised option
6. Transition to a new provider

Each stage of the transition is to be “... facilitated by the Commission in partnership with each person, their family, carer and/or guardian”, with individuals able to “...choose whether they stay living with the same people in the same house, move with them to a different shared living arrangement, or whether they want a more individualised accommodation option”.<sup>136</sup>

### 3.8 Engagement

In 2014, to support the Transition Process, the Commission published ‘How I want to live and be supported’ (**the Booklet**).<sup>137</sup> The booklet contains information about a range of accommodation supports available to people with disability support funding in WA. The Booklet sets out an engagement process for those living in the Commission’s group home accommodation. Specifically, engagement is described in the following terms:

*‘The Commission’s Transition Team will send letters and emails, will make phone calls and will meet with you and your family and carers, if you are changing to a non-government provider. The Transition Team will explain the process in more detail when they meet with you and your family or carers.’*

The Booklet was developed by the Independent Information Officer employed by Therapy Focus. The Officer’s role was to provide impartial information and advice to people involved in the Commission’s transition of some accommodation services to the non-government sector. The Commission posit that the Booklet ‘covers information that the Officer identified for consideration by individuals, families and guardians involved in the process’.<sup>138</sup>

In ‘Information about changes to Disability Services Commission accommodation services: Transition Process’,<sup>139</sup> the Commission’s ‘selection for transition’ engagement process is described in the following way:

*‘After receiving a letter to notify you that your person has been selected for transition to a non-government provider, a transition team member will contact you to arrange a time to meet. Your family member, friend or the person for whom you are a guardian in the Commission’s accommodation service will be informed of their selection in collaboration with you.’*

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<sup>135</sup> Disability Services Commission,. 2013. *Information About Changes To The Disability Services Commission Accommodation Services: Transition Process*. Perth: Government of Western Australia.

<sup>136</sup> Ibid

<sup>137</sup> Disability Services Commission,. 2014. *How I Want To Live And Be Supported*. Perth: Government of Western Australia, <http://www.disability.wa.gov.au/Global/Publications/Reform/Accommodation%20services/Therapy-Focus-How-I-want-to-live-and-be-supported.pdf>

<sup>138</sup> "Accommodation Services Transition". 2016. *Disability.Wa.Gov.Au*. <http://www.disability.wa.gov.au/individuals-families-and-carers/for-individuals-families-and-carers/accommodation-services-transition/>.

<sup>139</sup> Disability Services Commission,. 2013. *Information About Changes To The Disability Services Commission Accommodation Services: Transition Process*. Perth: Government of Western Australia.



The Commission has also published a further seven Transition Process Updates, with the last one dated September 2015,<sup>140</sup> and service provider profiles intended to “...provide individuals, their families, friends, advocates or guardians with general information that can help them decide which organisations they would like to talk to about providing future accommodation support services”.<sup>141</sup>

### 3.9 Findings

Drawn from the 24 semi-structured interviews with families and key workers, the following are mini case studies about decision-making and engagement.<sup>142</sup> Together, they support the reviews overall findings that supported decision-making in the transition process is inconsistent, contact between Transition Officers and people with disability in the Commission’s group home accommodation is not routine, families lack information about engagement about decision-making, and there is a lack of transparency regarding assessment in relation to decision-making capacity.

#### Sean

Sean lives in a Commission group home listed for transition. The group home is in an NDIS MyWay trial site and Sean has been interacting with trial.

When interviewed the family and Sean’s key worker did not know if the Booklet had been provided to Sean. Sean’s family advised that they thought “... *he hadn’t received it*”; while his key worker confirmed that he had not.

Sean did meet with a Transition Office, though Sean’s family and his key worker do not know what was discussed. Despite meeting with the Transition Officer, Sean’s parents have continued to be regarded as primary decision-makers for Sean and they confirm that “... *Sean has not been engaged further with the process*”.

Both Sean’s family and his key worker are of the view that Sean has not been engaged in any decision-making process, and they are not aware of any steps being taken to assess Sean’s decision-making capacity or to exempt him from any decision-making.

#### John

John lives in a Commission group home in Perth’s metropolitan area. John’s key workers and family strongly believe that he is capable of making decisions in a supported environment and they are concerned that he has not been engaged in the transition process.

John was not given the Booklet and he has not been contacted by a Transition Officer. John’s family and his key workers confirm that John has not been engaged in the process of choosing a disability service provider.

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<sup>140</sup> Disability Services Commission,. 2015. *Transitioning Management Of Accommodation Services To Non - Government Providers: Update – September 2015*. Perth: Government of Western Australia, [http://www.disability.wa.gov.au/Global/Publications/Reform/Accommodation%20services/Transition\\_Process\\_Update\\_September\\_2015.pdf](http://www.disability.wa.gov.au/Global/Publications/Reform/Accommodation%20services/Transition_Process_Update_September_2015.pdf)

<sup>141</sup> Disability Services Commission,. *Accommodation Services Transition: Service Provider Profiles*. Perth: Government of Western Australia, <http://www.disability.wa.gov.au/Global/Publications/Reform/Accommodation%20services/Accommodation-services-transition-Service-provider-profiles.pdf>

<sup>142</sup> All names, specific locations and other identifying factors have been removed to protect confidentiality.

John's family and key workers are not aware of an assessment of decision-making capacity which could prevent John from having meaningful input into the decision-making process.

#### **David**

David's accommodation has been transitioned to a non-government provider.

David's family and key workers thought that he had not been given the Booklet. When asked if David could have been contacted by a Transition Officer, his key worker was certain that he was not. David's family were not as sure as they aren't able to spend a lot of time with him.

David's family and key workers confirm that he was not engaged in the process of choosing a provider; this task fell solely to his family. David's family and key workers were not aware of an assessment of decision-making capacity being undertaken.

#### **Adam**

Adam lives in a Commission group home in Perth's metropolitan area and his home is listed for transition to a non-government provider.

Adam's family and key workers thought that he had not been given the Booklet and they report that he has not been engaged by a Transition Officer.

Adam's family and key workers think Adam needs some supports to make decisions and say "*...he is capable of making his desires and hopes understood*". Adam has not been engaged in the transition process.

Adam's family and key workers are not aware of an assessment of decision-making capacity which would exclude him from input into the decision-making process.

#### **Stalker Road**

Families first reported concerns about the engagement of a person with intellectual disability from Stalker Road at a transition meeting of families in West Perth in mid-2015. The person attended the meeting at the request of the Office of the Public Advocate.

While it was clear to those present that the person with intellectual disability was being engaged in the transition process, no supports were implemented for their engagement in the meeting. This resulted in misinformation being passed on to his housemates which caused anxiety for all residents about their future accommodation.

The West Perth meeting provided information to the families about the transition process and options they may wish to explore. Families raised their concern that "*... information was presented with no adaptation to for the person with intellectual disability*".

Families reported that the person with intellectual disability return to their group home after the meeting and advised other housemates that they were "*...all going to live with an aged care provider*". The families advise that "*... no further attempts were made to include them in subsequent meetings with families and the transition team*".

#### **Clarke Way**

In January 2016, an Administrator for a person with intellectual disability at Clarke Way wrote to the Commission's Director General, Ron Chalmers, with her concerns about a Transition Officer meeting in July 2015. The following is an excerpt from that correspondence:

*"At the first group meeting for families with (Transition Officer) on 7<sup>th</sup> July 2015, I suggested that we (families and staff) have discussions to come up with a plan of how we may best help and support our loved ones through this potentially disruptive and unsettling time to minimise the potential for upset and stress. All*

*present at the meeting agreed that this was a good idea and to include the staff so that we can all be 'on the same page' when speaking with our loved ones about the impending changes."*

During the meeting in July 2015, the Transition Officer minuted the resolution and suggested that the matter would be raised at a Local Area Managers meeting.

The lack of clarity about engaging people with disabilities still concerned the Administrator when she had received no response six months later:

*"Has my brother been given this booklet ('How I want to Live and Be Supported') and is someone explaining ALL OF HIS OPTIONS to him?"*

The Director General, Ron Chalmers, responded (**the Response**) on 8 February 2016 to advise that:

*"The Commission has made significant efforts throughout the transition project to ensure that the rights of family members, guardians and other decision makers are fully respected. This includes the right of each decision maker to decide when and how their supported person hears about the transition on (sic) their house." (Emphasis added)*

The Response appears to support the view that families and 'others' and not the person with disability are regarded as decision-makers in the context of the transition process. It also appears to suggest that the means by which the person with disability will be engaged is led by their family member, guardian or other decision maker.

The Response goes on to suggest that:

*It is, of course, completely appropriate for a decision maker to decide they want to discuss the transition process with their supported person jointly with a trusted staff member, but it is up to each decision maker to make that choice themselves.*

### **Lombardy Crescent**

In February 2016, the Commission announced a decision to close Lombardy Crescent, with families informed that their loved ones would be moved within four to six weeks.

Those interviewed for the review reported that at a monthly meeting on 17 February 2016, those living at Lombardy Crescent were asked about accommodation options and all residents indicated that they wanted to stay at Lombardy Crescent.

The meeting, a regular event facilitated by Social Trainers to encourage engagement in decision-making for residents, covered a number of topics, including menu planning, outings for the next month, and items they want to purchase.

Together, Lombardy Crescent staff and families wrote to the Director General about their concerns regarding the closure with families saying:

*"We have learned that other families undergoing transition get a series of choices that we were not given; the first and most important of those being the right to choose an individual option or staying with current housemates. Neil and Bill have not been extended this option and we think that families should be allowed to meet and that our brothers should be asked what they want to do."<sup>143</sup>*

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<sup>143</sup> Names changed to protect confidentiality

Those interviewed suggested that the decision to close Lombardy Crescent was made without consultation with those living in the accommodation and when the decision was made, “... *the families were simply informed that the home was to be closed and told where their loved ones were moving to*”.

While not a part of the transition process initially, those interviewed raised the actions of the Commission in this case as a concern, advising that “... *it speaks to a culture of not engaging people with disability in decision-making*”. At the end of February 2016, the Commission had announced their intention to transition Lombardy Crescent to a non-government provider as part of Transition Group Eight.

#### 4 Discussion and conclusion

Responses to the review suggest that there may be inconsistency in the application of the Commission’s engagement process, with the following table consolidating responses. The table indicates that staff across the mini case studies in this review unanimously reported that people living the Commission’s group home accommodation had not received the Booklet. Moreover, that three people with disability had also not met with a Transition Officer as part of the transition process. The responses of family members concur with the responses from staff.

##### Engagement tools and information – families and staff

	Received the booklet? Staff response	Received the booklet? Family response	Met with a Transition Officer? Staff response	Met with a Transition Officer? Family response
<b>SEAN</b>	No	Not sure	Yes	Yes
<b>JOHN</b>	No	Not sure	No	No
<b>DAVID</b>	No	Not sure	No	Not sure
<b>ADAM</b>	No	Not sure	No	No

The case study appears to point to there being at best an *ad hoc* and inconsistent process in regards to engaging people with disability living in the Commission’s group homes in decision-making as part of the transition process. This is contrary to those national and international instruments, outlined in this submission, designed to prevent such activity and promote self-determination and decision-making by people with disability.

Where required and deemed necessary, decision-making supports are crucial to the success of a decision making process and in this case study it appears that no effective measures were put in place. If supports had been assessed and implemented prior to the attendance at the West Perth meeting, for example, the subsequent anxiety that the person with disability reportedly experienced could have been limited.

The correspondence with a Clarke Way family member, highlighted in this case study, raises some important questions about how the transition process is implemented and whether or not supported decision-making is a priority for the Commission as part of the process of transition to non-government providers. Indeed, it seems reasonable to conclude that the Transition Officer should be able to answer questions raised by family members about the process of decision-making, with the Transition Officer also able to explain the decision-making process for people with disability.

The letter from the Director General confirms that families are engaged by Transition Officers and a review of the correspondence by the review appears to suggest that families and 'others' are regarded by the Commission as decision-makers. It is inferred that people with disability are to be regarded as 'supported persons' rather than those with an explicit right to make decisions, despite the Commission's public commitments about the importance of decision-making. Additionally, the Commission's own Information Sheet about the transition process clearly states that:

*"Your family member, friend or the person for whom you are a guardian in the Commission's accommodation service will be informed of their selection in collaboration with you."<sup>144</sup>*

The interview responses support the view that families and staff believe that people with disability have not been engaged by a Transition Officer. Indeed, even where a person with disability has met with a Transition Officer, the family have continued to act as the decision-makers within the transition process. The inconsistency in the application of supported decision-making has the effect of raising legitimate questions about whether engagement in decision-making is taking place at all.

Anecdotally, when this matter has been raised by the CPSU/CSA and others with the Commission, the response has been to say that this is not an industrial matter and that frontline staff would not know if the people they work with on a daily basis are being engaged in decision-making. Irrespective of who is asking the question about engagement of people with disability, it is striking that the Commission appear unable to answer important questions about the transition process. Indeed, it seems reasonable to conclude that the Commission should easily be able to, in general terms with families, confirm who they have engaged in decision-making and who they may have exempted as being unable to take part in the process.

In isolation no one element of the case study contained within this submission conclusively evidences a total lack of engagement or a deliberate attempt to ensure those living in the Commission's group homes be excluded from decision-making, but there is much to support the view that the transition process outlined here may not have engaged in a transparent and meaningful way with people with disability. With this in mind, we continue to campaign for the Commission to place on hold the transition process until such a time as existing engagement and decision-making protocols, policies and activities have been reviewed.

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<sup>144</sup> Disability Services Commission,. 2013. *Information About Changes To The Disability Services Commission Accommodation Services: Transition Process*. Perth: Government of Western Australia.





## 5 Appendices

### 5.1 Semi-structured interview

#### Introduction

The UN Convention on the Rights of Persons with Disabilities considers that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them. Australia ratified the United Nations Convention on the Rights of Persons with Disabilities on 17 July 2008

#### Safeguards:

Safeguards refer to supports and mechanisms that promote, enhance and protect an individual's:

- human rights
- decision making, choice and control
- safety and wellbeing
- citizenship and quality of life.

The starting assumption is all individuals have capacity to make decisions and exercise choice, regardless of their disability, unless proven otherwise. Capacity is decision-specific.

**Person centred approach:** A way of supporting and working with people with disability that keeps the person at the centre of decision making across planning, funding and support and service arrangements.

#### Questions

1. Were individuals given the booklet '*How I want to live and be supported*'?
2. Did the individual meet with a Transition Officer?
3. Did the individual meet with a Project Officer?
4. Did the individual meet with the Transition Team prior to selection of a service provider?
5. Was the individual engaged at any stage of the process by the Transition Team?
6. Was an assessment of decision-making made? If so, by whom?
7. Was an assessment of requirements to assist access to decision-making made?
8. What supports were deemed to be necessary, if any?