

27 April 2012



The Committee Manager
Committee on Community Services
Parliament House
Macquarie St
Sydney NSW 2000

Dear Committee Manager

Inquiry into Outsourcing Government Community Service Delivery

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to provide input to the Legislative Assembly Committee on Community Services' inquiry into the devolution and outsourcing of housing, disability and home care services from the Government to the non-Government sector (the inquiry).

PIAC is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected.

In 2009 PIAC published a research report co-authored with the Whitlam Institute and the Social Justice & Social Change Research Centre, University of Western Sydney, '*A question of balance: Principles, contracts and the government-not-for-profit relationship*' (the report). The report gives an analysis of the nature of contracts between government and not-for-profit organisations in human services, the principles upon which they are built and the implications of the terms used in these contracts. It makes a number of recommendations concerning the development of government not-for-profit contracts and government contracted service delivery, which are relevant to the current inquiry.

A copy of the report is attached to this letter.

Should you require any further information, please contact Deirdre Moor, Manager, Policy and Programs, on (02) 8898 6507.

Yours faithfully

A handwritten signature in black ink that reads "Edward Santow".

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Recommendations

- 1. That a set of common principles for government–not-for-profit contracts and government contracted service delivery programs (as outlined in Part 7 of the report) be adopted.**

The proposed principles can be summarised as follows:

A. Foundations

- (i) All parties should enter into the contract in *Good Faith*.
- (ii) There is a presumption of *Good Will*.

B. The relationship between the contracting parties

- (i) The relationship between the contracting parties is one of *Trust*
- (ii) The contracting parties will accord each other *Proper Respect*.
- (iii) The relationship between the contracting parties is *Supportive and Collaborative*.

C. Nature of the contract

- (i) The contract should be *Clear and Readily Understood*.
- (ii) The requirements in the contract should be guided by *Proportionality*.
- (iii) The terms of the contract should be *Responsible and Reasonable*
- (iv) The contract should establish *Meaningful Outcomes*

D. Operation of the contract

- (i) The contract should allow for *Decisions* to be made at the *Appropriate Level*.
- (ii) The contract should operate *Consistent* with the presumption of Good Will and Trust
- (iii) The contract should be based on *Full and Fair Costing*.
- (iv) The contract should allow that *Risk* exists, cannot be eliminated and will be *Shared*.
- (v) The contract should be administered in a *Timely Manner*.

- 2. That the principle that there is no justification for unfair contract terms in standardised contracts be applied to the contracts regulating the arrangements between government and the not-for-profit sector in the area of service provision.**
- 3. That the contractual principles (set out in detail in Part 7 of the report) be reflected in enforceable contractual provisions in terms of obligations on both parties and effective remedies for breach.**
- 4. That governments give priority to developing shorter-form framework agreements that are not unduly legally complex to better reflect the range in size, risk and complexity of government–not-for-profit service delivery programs and funding arrangements.**
- 5. That governments remove from all funding and service delivery contracts any interpretive or other provisions that exclude the operation of the *contra proferentum rule*.**
- 6: That all funding and service delivery contracts between government and the not-for-profit sector include preliminary clauses that clearly:**
 - (a) set out the purpose and objectives of the contract so that performance can be measured primarily against achievement of that purpose and those objectives; and**

- (b) set out the basis of selection of the not-for-profit party for the contact, including listing its particular expertise and skills relevant to the government program.

- 7. That Australian governments adopt standard form provisions (as set out in Part 7 of the report) to improve fairness and transparency and the overall contractual relationships. Such provisions should deal with the following matters in all funding and service delivery contracts between government and the not-for-profit sector:
 - a. Intellectual property and moral rights
 - b. Employment issues: Removal and Replacement of Specified Personnel
 - c. Use of income generated
 - d. Acknowledgment of funding
 - e. Freedom of speech: no limit on public statements
 - f. Prevention of fraud
 - g. Reporting obligations: keeping of records, independent audits and access

- 8. That all Australian governments collaborate to adopt a standard chart of accounts for funding and reporting for not-for-profit organisations in receipt of government funds.