

Outsourcing Community Service Delivery

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THE LAW SOCIETY
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Mr Kevin Anderson MP
Chairman
The Community Services Committee
Parliament House
Macquarie St
SYDNEY NSW 2000

By email: communityservices@parliament.nsw.gov.au

Dear Mr Anderson

Inquiry into Outsourcing Community Services Delivery

The Government Solicitors Committee of the Law Society of New South Wales (the GSC) has reviewed the Terms of Reference for the Inquiry into Outsourcing Community Services Delivery. The GSC notes in particular that the Community Services Committee is:

focusing specifically on the extent to which this process is appropriately managed, that probity and accountability mechanisms are in place to monitor service providers and to ensure that organisations are delivering quality services to their clients.

The GSC welcomes the Inquiry and agrees that there is a need for greater clarity about the regulation of non-government service providers delivering services traditionally provided by government.

The GSC has identified the following areas which it believes would benefit from further analysis and to which the Committee may wish to turn its attention:

1. in what circumstances contractual outsourcing may not be possible (because the function has already been the subject of delegation) or may require the approval of the Treasurer (as a "joint financing arrangement")
2. whether in some circumstances, outsourcing is, in fact and law, a procurement to which the laws, policies and probity issues to do with procurement of services will apply
3. whether outsourcing precludes the public from access to fora, processes or remedies that might otherwise be available, for example, access to the Ombudsman or ICAC or the application of the model litigant rules or the Premier's rules on interagency litigation

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4. whether there are services in relation to which it would be appropriate to provide access to the fora, processes or remedies referred to in point 3, for example, as is now the case for licensed boarding houses which have come within the jurisdiction of the NSW Ombudsman since 2002¹
5. how issues of privacy should be dealt with when the outsourcing requires access to personal information and, on the other hand, to what extent the provisions of the *Government Information (Public Access) Act 2009* should apply
6. whether outsourcing avoids a level of reporting on the details of activities being conducted, or should be subject to more consistent and robust scrutiny of public spending, for example, by the enactment of legislation providing for complaints, reviews and monitoring
7. the effectiveness of key performance indicators in monitoring the performance of the service provider and the difficulties which may arise in settling contract terms as well as trying to enforce them if KPIs are not met, and
8. whether there is a risk that an outsourcing agency may be liable if the selection process is found to have caused loss to members of the community using the outsourced services.

The GSC would be happy to elaborate on any of the issues identified in this letter and looks forward to reading the Committee's report in due course.

Yours sincerely

Justin Dowd
President

¹ Licensed boarding houses are subject to the jurisdiction of the NSW Ombudsman under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and the *Ombudsman Act 1974*. While boarding houses do not receive government funding, many of their residents will be recipients of support from agencies such as Ageing, Disability and Homecare and residents receive support services funded through the government's Boarding House Reform Program. See: http://www.ombo.nsw.gov.au/publication/PDF/factsheets/FS_CSD4_LicensedBoardingHouses.pdf.