

Submission
No 29

**INQUIRY INTO PROCUREMENT PRACTICES OF
GOVERNMENT AGENCIES IN NEW SOUTH WALES AND
ITS IMPACT ON THE SOCIAL DEVELOPMENT OF THE
PEOPLE OF NEW SOUTH WALES**

Organisation: Transport Workers' Union of NSW

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25/01/2024

Transport Workers' Union of New South Wales



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1. About the TWU

1.1 The Transport Workers' Union of New South Wales (TWU) represents tens of thousands of people in Australia's road transport, aviation, oil, waste management, gas, passenger vehicle and freight logistics industries.

1.2 With over one hundred (100) years' experience representing the workers who conduct Australia's crucial passenger and freight transport tasks, the TWU has been proactive in advocating for the establishment and improvement of industry standards which advance the lives and safety of transport workers, their families and the community at large.

2. Introduction

2.1 The TWU welcomes the opportunity to contribute to the *'Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales'*.

2.2 By virtue of the long representational history that the TWU has with transport operators and parties relevant to the procurement practices of government agencies, the TWU is uniquely positioned to comment on said practices, as well as the impacts.

2.3 Within the scope of the TWU's own coverage, transport industries such as buses, waste and other areas such as parcel delivery and construction, are pertinent to the details outlined in the terms of reference for this inquiry. Though this submission will detail issues and recommendations broadly, the information within remains relevant for the following points, and certain sub points, in the terms of reference; (a), (b), (c), (f), (g), (h) and (i).

3. Procurement in Buses and the Impact of Privatisation

3.1 Discussion regarding procurement in buses cannot be had without reference to bus privatisation, and by extension, the current state of the industry as a whole. The privatisation of bus regions in New South Wales was carefully implemented over time by the then Liberal Government.

3.2 The seeds were sown as far back as 2012, when bus services in Greater Sydney were subject to a competitive tendering process. It should be noted that prior to the introduction of competitive tendering, bus services in Greater Sydney were provided either directly by the New South Wales Government through the State Transit Authority (STA), or by private operators who entered into contracts with the New South Wales Government through direct negotiation rather than a tender process.

3.3 From the very beginning, it was abundantly clear that the intention behind the introduction of competitive tendering was to put downward pressure on the pay and conditions of bus drivers. This much is evident given that labour constitutes the single biggest cost component in bus contracts.

3.4 In May 2017, the New South Wales Coalition Government announced that the operation of



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bus services in Region 6 would be privatised via a competitive tender process¹. The contract was awarded to Transit Systems, who still to this day maintain operation of Region 6. Figure 1.1 below reflects this.

Figure 1.1 – Current Sydney Bus Operators (December 2023).

Region	Operator
1	Busways
2	Transit Systems
3	Transit Systems
4	CDC NSW
6	Transit Systems
7	Busways
8	Keolis Downer Northern Beaches
9	Transdev John Holland
10	U-Go Mobility Maianbar Bundeena Bus Service
11	CDC NSW

- 3.5 The above figure reflects a clear favour leaning towards large national operators such as Transit Systems, CDC and Busways (who remains the largest privately owned bus operator in the country).
- 3.6 Prior to the introduction of competitive tendering, many privately-operated bus regions enjoyed relatively stable industrial relations environments. This is no longer the case, as a result of competitive tendering. Prior to the privatisation of the bus industry across New South Wales, the bus network was predominantly serviced by the STA, a New South Wales Government run public transport agency. The employment conditions of STA's workforce were determined by the *State Transit Authority Bus Operations Enterprise (State) Award (the Award)*.
- 3.7 The Award represented a central document that provided one consistent set of employment conditions for bus drivers operating across NSW. These employment conditions were negotiated and built upon by trade unions that sought to ensure fair and reasonable pay and conditions for employees, resulting in positive safety outcomes for drivers, passengers and the community at large.
- 3.8 Where the New South Wales Coalition Government consecutively privatised and put regions out for tender, the Award no longer applied to said regions. This has resulted in bus drivers across New South Wales completing substantially the same role with little parity in pay and conditions across the industry.
- 3.9 It can be said, without exaggeration, that the very nature of competitive tendering facilitates a degradation of employment conditions for those engaged by private companies. In order for tenders made by private bus operators to be viable, they are required to offer the lowest

¹ <https://www.transport.nsw.gov.au/newsroom-and-events/reports-and-publications/region-6-bus-franchising-factsheet>



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possible price and over-promise on service delivery key point indicators that can be met to ensure competitiveness against other companies tendering for the same work.

- 3.10 When a private bus company does secure a contract, they continue to put downwards pressure on workers by undercutting their pay and conditions to maximise the company's profit margins. In effect, where competitive tendering is used in industries that were traditionally considered public services, the quality and safety of the service will inevitably degrade as private bus operators put profits before people.
- 3.11 Where tenders had minimum standards, entities that secured tenders subsequently created a "second" entity – an outcome that resulted in bus drivers being engaged under two different sets of conditions and rates of pay. Such a system effectively erodes the conditions and achievements that were established by workers and unions for years.
- 3.12 In recent years, the decline of service quality and quantity, driver safety, pay and overall conditions, driver retention, and of course, the struggle to recruit new drivers entirely, can be attributed to multiple influences. These influences include the lasting effects of the COVID-19 pandemic. It is without question, however, that privatisation, and by extension, competitive tendering, has contributed towards the aforementioned issues.
- 3.13 Drivers have suffered wage cuts, unsafe staffing levels, insecure work, expectations to work harder and faster for dangerous periods of time, unreasonable timetables and poorly resourced routes, which, as a result, demand drivers to engage in unsafe road practices, among other issues. These factors were born from private bus companies tendering for work at the lowest possible price.
- 3.14 In context with the outlined terms of this inquiry, it should be noted that the "social development" of the people of New South Wales will be, and has already been, undoubtedly impacted in a negative manner – particularly in areas of high vehicle dependency. The public have suffered through the ongoing, and still very current shortage of bus drivers. Delayed and cancelled services fail to provide a satisfactory system for the public - an issue that, again, can find its roots in the privatisation of services and competitive tendering.
- 3.15 Current, and in many cases now former, bus drivers no longer hold a favorable perspective on their jobs, nor the industry. It shouldn't come as a surprise that perspectives looking from the outside in – that is to say, individuals looking to join the bus workforce – are of a similar view.
- 3.16 The TWU commissioned a report from Qdos Research Pty Ltd titled '2018/19 Bus Industry Survey' (the report) that recorded data submitted between the periods of December 2018 until February 2019. The report presents valuable information, and also highlights the perspectives of bus drivers themselves. In excess of 300 bus drivers responded in the research.
- 3.17 The report finds that 74% of drivers believe that the (then) New South Wales Government's tendering has left the bus industry in a worse state. A further 73% believe that the competitive tendering established by the New South Wales Government compromises passenger safety.
- 3.18 Responses regarding fatigue and comfort were alarming, as 85% of drivers claim to drive for



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over 3 hours between breaks. 42% of drivers who drive 5 hours or more between breaks suffer medial issues. Furthermore, 96% of drivers believe that driving without adequate breaks puts them and their passengers at risk. However, 87% of drivers would rather hold on to their business than use toilet facilities when there are passengers on board.

3.19 88% of respondents believe that the pressure the Government puts on bus companies flows down to drivers. As a result, 67% of bus drivers believe the pressure to meet timetable obligations compromises the safety of passengers. 74% of drivers believes a lack of buses or drivers servicing routes place pressure on drivers to drive unsafely. Further to this, 64% of drivers feel extra pressure to meet timetable deadlines daily.

3.20 Abuse, in any way it may manifest, is a serious issue that was also noted;

- 84% of drivers face verbal abuse from passengers, with a further 81% experiencing verbal abuse daily.
- 65% of drivers had felt threatened by the behaviour of passengers in the past year (at the time the research was conducted); and
- 46% of drivers confirmed that they have faced some form of aggression at least once a week and 18% face aggression daily.

3.21 Below are some general, and more specific comments, from respondents:

- *"My thoughts are I hope I don't get abused or threatened with my life today."*
- *"Maintaining the buses has dropped off. Never know if the bus is going to last a shift. Air conditioning not reliable. Doors opening when they like or not closing at all."*
- *"Clearly the Government is more worried about cost cutting than providing quality public transport. The easiest way to achieve this is to privatise, less pushback from the public. And with most private companies, drivers are the lowest common denominator, easiest to exploit and easiest to replace."*
- *"I feel that timetables times are unrealistic, do not allow for traffic etc. Main issue is lack of support from management and Government regarding safety of drivers, we are extremely exposed to some of the worst people in society, and there is no age barrier 15 – 50 they believe it's their God given right to travel for free and they treat us disgustingly. And when these things are brought up at a driver meeting management make veiled innuendos on our job security (usually starting 'be it on your own head if you refuse them admission on bus', etc.)"*
- *"In situations where there is abuse or threatening behaviour directed at a driver the company deflects most of the blame at the driver for inflaming the situation. Privatisation and the tendering process is a total failure under the Liberal govt."*
- *"My company has been sold twice in the 2 years I have been working there and it has*



consistently gone downhill with safety, inadequate training of drivers and especially painting (and) repairing vehicles and management hasn't got a clue and can't even drive a bus."

- *"Have been regularly abused and threatened. Objects thrown at the bus, with several windows being broken including the one directly beside me. Was spat at by a youth, who later punched another driver."*

3.22 Ultimately, the report finds that a very high proportion of drivers agree on some serious safety problems. Unachievable timetables and inadequately resourced routes are putting them under pressure to drive unsafely. Drivers don't think they are getting adequate breaks and almost all of them think this is putting them and their passengers at risk. They also attribute a litany of health issues to inadequate breaks. A significant majority are facing verbal abuse very often, and two thirds have felt physically threatened in the past year (for some it's a lot more often).

3.23 Drivers directly link all these issues to Government tendering leading company pressure to meet unreasonable expectations that ultimately gets lumped on them. With these factors in mind, it is no wonder why the industry struggles desperately to both retain current drivers, and recruit new ones – exacerbating the issues in driver shortages and decreased service quality and quantity.

3.24 Since the privatisation of buses, contracts have been in favour of the employer, to the detriment of workers. While there is a clear expectation on the part of employers for their drivers to exhaust themselves in their duties, those same operators enjoy the benefit of no consequences. There is a lack of observed punishment that is suitable in these cases, which typically only perpetuates the existing cycle.

3.25 Furthermore, the initial pitch of introducing a competitive tendering process suggested that the tenders would enable the New South Wales Government in delivering a greater standard of services to the public. The New South Wales Bus Industry Taskforce found that this is not the case², as denoted by what has already been covered in this submission so far.

3.26 The TWU would also highlight that with the developments of the Sydney Metro, and the procurement of labor in that space, there has been a significant shift in focus towards the advancement of said project at the expense of bus services. The continuous improvement of bus services has been left in the shadow of large-scale infrastructure projects and investments, and is simply put, unacceptable.

3.27 The TWU will provide suggestions for this inquiry further within this submission.

4. Procurement and Issues in Waste Management

4.1 Waste is an industry in which contracts are awarded to waste management companies by local Governments. In a somewhat similar manner to what is seen in the bus industry, large (even multinational) companies, such as Cleanaway, Veolia and Remondis (among others)

² NSW Bus Industry Taskforce – First Report (2023). *Transport for NSW*.



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enjoy the benefits of claiming their respective contracts.

- 4.2 To fulfill the obligations of their contracts, it is all too common in the TWU's experience for waste management companies to, in one way or another, create poor conditions for their workers, and launch what can be described as attacks on the pay of workers in the worst of cases.
- 4.3 The lowest price results in a tender being secured. One operator in the industry, that being Cleanaway, undermines and manipulates the award in order to offer the lowest possible price and secure the tender. As a result, Cleanaway has been winning a significant number of tenders – all at the expense of their workers
- 4.4 Over the past year, the attempts of Cleanaway specifically in undermining the pay and conditions of their workers has resulted in no less than 10 Protected Industrial Actions across New South Wales, as well as a significant number of safety risks and worker shortages.
- 4.5 The observed relationship between Cleanaway and its workers is largely a negative one, due to ongoing disputes about enterprise bargaining, among other factors.
- 4.6 The TWU has long observed a history of poor conditions and job security in this space. Waste management companies, with some offenders more notable than others, continuously aim to exploit their workers and reap the benefits all the same – all while local Governments turn a blind eye, in many cases.
- 4.7 City of Sydney Lord Mayor, Clover Moore, has previously refused Cleanaway workers' requests to meet to help reach a fair agreement. This case serves as a specific example of just how important both the involvement of local Governments in managing their contracts is, as well as consultation with workers and their union – no progress can be made otherwise.
- 4.8 In 2023, Cleanaway announced a \$49 million half-year profit after tax – appallingly, during a period of protected industrial action in multiple states (including New South Wales) over attacks on pay and conditions that would send workers significantly backwards. Cleanaway Hillsdale, who work the City of Sydney contract, have taken numerous protected industrial actions in 2023 – with a notable focus on pay parity, among other factors. During one of the actions, a member shared;

“... it just makes no sense whatsoever. We are doing the same job... it is the same company. I don't understand how they can't give the same pay as other yards.”
- 4.9 Training is also a key issue that is consistently raised by waste management members, as well as being observed in the TWU's own experience. In 2022, the Supreme Court found Cleanaway guilty on two health and safety breaches over a 2014 South Australia truck crash that killed two people, on the basis it had failed to adequately train and supervise the driver, who was also badly injured in the crash and had already been cleared of the charges³. Though

³ Truck company has some convictions dropped over 2014 fatal Adelaide crash. (2022). ABC News. [online] 26 May. Available at: <https://www.abc.net.au/news/2022-05-26/sa-cleanaway-spared-some-convictions-over-fatal-crash/101103414>



this specific example took place in South Australia, it serves as a picture of Cleanaway's conduct.

- 4.10 Following an extensive investigation, Cleanaway was charged with a number of offences by the Queensland Department of Environment, Science and Innovation. Specifically;
- One offence contrary to section 440(1) of the *Environmental Protection Act 1994* (EP Act) for willfully and unlawfully causing an environmental nuisance;
 - One offence contrary to section 430(2) of the EP Act for willfully contravening a condition of an environmental authority (EA); and
 - Ten offences to section 430(3) of the EP Act for contravening a condition of an EA⁴.
- 4.11 Though the two aforementioned examples take place outside of New South Wales, they serve as a picture into Cleanaway's consistent conduct.
- 4.12 In 2022, the TWU successfully fought for the reinstatement of a delegate and elected worker bargaining representative at Cleanaway who was unfairly sacked by the company. Commissioner Cambridge of the Fair Work Commission determined that;
- "The reason for the employer's strong motivation to achieve the objective of the dismissal of the applicant has been disclosed by the identification of the X factor. A careful consideration of the evidence in totality, has provided for the compelling conclusion that the X factor was the applicant's role as a TWU delegate, and his enthusiastic engagement in the dispute surrounding the enterprise bargaining negotiations with Cleanaway."*
- 4.13 The TWU had also filed a dispute in the Federal Court over Cleanaway breaching its obligations to provide information to workers and the Fair Work Commission for a protected action ballot, which delayed workers' accessing their rights.
- 4.14 In further reference to Cleanaway, the TWU has lodged two intractable bargaining disputes against Cleanaway in the Fair Work Commission after a long stalemate over the company's attempts to worsen conditions and force workers onto grueling 7-day rosters to secure contracts over competitors.
- 4.15 The TWU notes instances where waste management companies fail to consult their workers on key changes or implementations. In 2021, Remondis took away a paid overtime rest break without consulting their workers, seeing some drivers losing up to \$150 a week at the time – which led to a protected industrial action.
- 4.16 These are just some examples of general bad practice in the waste management space, and the TWU believe it should highlight the importance of good procurement practices and the need for legislative intervention.

⁴ Queensland Government. (2023). *Cleanaway charges*. [online] Department of Environment and Science, Queensland. Available at: <https://www.des.qld.gov.au/our-department/news-media/mediareleases/cleanaway-charges>.



5. Procurement in Parcel Delivery and Construction

- 5.1 There are sectors within the broader transport industry where the New South Wales Government maintains influence and direct involvement, and as such, the TWU would address these spaces as well. One particular area of interest is the space of couriers. Far too long had couriers been subject to unreasonable pay and conditions, a phenomenon that was further exacerbated with the introduction of Amazon Flex in Australia.
- 5.2 In 2022, the TWU won enforceable rates for couriers and Amazon Flex drivers in what can best be described as a landmark determination. The win would see couriers receive significant improvement to their enforceable rates of pay, and this included gig-style Amazon Flex drivers. The determination was achieved through the hard work of the TWU and involved industry groups such as ARTIO, AI Group, the New South Wales Business Chamber, and major transport companies such as FedEx, Team Global Express and Toll.
- 5.3 The determination of the New South Wales Industrial Relations Commission would see owner-drivers of vans with a carrying capacity between 1.5 and 3 tonnes entitled to an enforceable rate of \$43.74 an hour, to be phased in over three years (effective from March 1, 2022).
- 5.4 This determination extended to Amazon Flex drivers – a notably significant win considering that these Flex drivers are the first in the world to enjoy enforceable rates of pay along with rights to dispute resolution, union representation and collective bargaining. Amazon Flex can be described as a “gig-style” parcel delivery model due to the system’s nature of distributing jobs through an app. The lack of regulation has seen Amazon shirk its shared responsibilities in ensuring the safety of its drivers, and others, on New South Wales roads.
- 5.5 These wins are especially important given that the pay rate for delivery drivers was set at \$27 per hour in 2006, and had remained unchanged until the new determination. That meant for years, the rate was significantly lower than where it needed to be. The enforceable rate of \$43.74 per hour is a figure reflective of today’s standards, and one where the cost recovery necessary for owner drivers and contract carriers to operate is taken into account.
- 5.6 “Cost recovery” for owner drivers and contract carriers includes, but is not limited to, maintenance of their vehicles, insurance, fuel and even toll roads. The rate of \$27, that had long overstayed its welcome, was an issue of safety when considering that such a rate is incapable of funding the continuous maintenance of vehicles and subsequent operations, particularly given the surge of inflation and cost of living, especially in recent years.
- 5.7 Other large players, such as FedEx, have threatened the job security of workers in the past. In 2021, thousands of FedEx workers were forced to take days of national protected industrial action for their job security, as the industry giant sought to outsource their work to cheaper labour hire. Beyond this, FedEx attempted to engage an underclass of owner drivers on substandard piece rates.
- 5.8 The subsequent effects for owner drivers would leave them subject to rates and conditions far inferior to (then) current workers. Below is a list of conditions under the proposal;



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- Owner drivers would be paid a flat rate of \$120, plus a piece rate of \$2.50 per parcel.
 - They would be expected to deliver 93 parcel per 10-hour shift. This equates to roughly 1 parcel every 6 minutes – entirely unrealistic and outright dangerous.
 - Drivers would lose rights like sick leave and superannuation, which FedEx (then) claimed would be covered under the piece rates along with cost recovery for fuel, vehicle maintenance, and other operating costs.
 - Under the system, drivers would lose all rights to collective bargaining, with FedEx intending to negotiate piece rates individually with drivers every 6 months.
- 5.9 This proposal was nothing short of dangerous. It would effectively serve to increase pressure on drivers already stretched to the limit, all while undermining job security protections which, at the time, were fought for and won merely a year beforehand.
- 5.10 It is of the utmost importance that such an exploitative model is not adopted by the large players, as other transport companies would have no other choice but to introduce their own identical models to remain competitive. The TWU has dubbed such models the “Amazon Effect” due to its emergence through the introduction of Amazon Flex. Combatting the spread of such destructive models also forms part of the underlying fight for transport reform that the TWU has led for years.
- 5.11 In 2022, transport workers and industry groups assembled in Canberra to meet with politicians to call for immediate support for an independent body to set minimum standards and end the Amazon Effect of cost-cutting and unfair competition smashing transport supply chains. This meet between workers, industry and politicians was also supplemented by a convoy of truck drivers, couriers, distribution workers and gig workers in Canberra, among other convoys across the country.
- 5.12 In the TWU’s experience, the courier space is plagued with issues in consultation, training and safety risks. There have been lived examples of companies failing to adequately consult with its contract carriers on matters relating to the work health and safety, as well as failure to provide appropriate training for the work they do.
- 5.13 There have been numerous instances in the past where the TWU has performed right of entries into workplaces for suspected contraventions of the WHS act. Generally, these contraventions included, but were not limited to, lack of consultation, inadequate training procedures and distribution of relevant information, unsatisfactory inductions for contract carriers, and general facilitation of unsafe workplace practices and conditions, either directly or indirectly.
- 5.14 In one instance, the TWU performed a right of entry to inquire into a suspected contravention of the WHS act, where through consulting with contract carriers that performed work for the company in question, the TWU reasonably suspected that the company was not ensuring the provision of adequate site induction training to its contract carriers for all sites they were required to enter, as required by section 19(3)(f) of the WHS Act.



- 5.15 Another case saw a collection of suspected contraventions in one workplace, ranging between;
- Section 17 – Management of risks;
 - Section 19(1) – Primary duty of care;
 - Section 19(3)(c) – Provision of Maintenance of safe systems of work;
 - Section 19(3)(f) – Provision of information, training and instruction;
 - Regulation 39 – Provision of information, training and instruction;
 - Section 47 – Duty to consult workers;
 - Section 48 – Nature of consultation; and
 - Section 272 – No contracting out.
- 5.16 Aramex is a parcel delivery that also has an eventful history with its own couriers and the TWU. In 2022, Aramex couriers across Sydney walked off the job in protest of unfair rates of pay in their franchise contracts. In many cases, these couriers were then earning as little as \$300 per week after costs. The average rate paid per parcel was just \$2.10.
- 5.17 Unregulated platforms like Amazon Flex destroyed pay and conditions across the industry by undercutting other parcel delivery companies. Interestingly, Amazon is on the list of Aramex's extensive range of large retail clients, effectively meaning that Amazon has signed a contract with a company they were undercutting through their own model.
- 5.18 Aramex has also attempted to throw its own responsibilities to the wayside, claiming that it is not actually a principal contractor when the TWU took the company to the Industrial Relations Commission in relation to work conditions, rates of pay, and other factors. Claiming to not be the principal contractor, despite contracting their work out to independent carriers, was effectively an attempt to avoid any level of accountability in providing appropriate conditions and rates of pay for their drivers. After running a jurisdictional argument in the Industrial Relations Commission, however, it was found that Aramex is indeed the principal contractor, and could therefore be held to account.
- 5.19 The aforementioned examples serve to illustrate just what kind of practices and environments that contract carriers are typically subject to in the parcel delivery space. Though many of the issues that are present can be attributed to large-scale, destructive disruptions (such as the introduction of Amazon Flex), there are steps that the New South Wales Government can take, and factors to consider, when engaging with parcel delivery companies or influencing their operations in any given capacity. Suggestions can be found further within this submission.
- 5.20 The TWU would also raise concerns with labour in construction and cement transportation. The following examples are just some of the notable experiences of the TWU in its time with construction operators;



- Management written enterprise agreements where pay structure is negatively impacted;
- Attempts to reduce superannuation;
- Difficulties in negotiation between employees and the employer;
- Difficulties in negotiation between the TWU and the employer. One particular operator strung out a negotiation process for an in-principle agreement over a 12-month period;
- Poor dispute resolution practices;
- Outright bullying and unethical behaviour from operators towards workers. Hanson Concrete management locked their truck drivers out of their Brandy Hill and Kulnura sites in 2022 because they took protected industrial action over pay parity throughout negotiations; and
- Companies attempting to profit off wage differences. In one case, regional employees were being paid significantly less per hour in comparison to their Sydney yard counterparts.

5.21 What is reflected is a repeated history in the entire space of companies undermining the pay and conditions of workers, with workers being subject to poor treatment in general. In a broader sense, the issues present in construction include (but are not limited to) late payments, or non-payment of workers, as well as non-adherence to contract determinations that should of course otherwise be legally adhered to by companies engaged in Government contracts.

6. Recommendations and Ways Forward in the Procurement Process in Buses

6.1 Ultimately, as suggested by the terms of reference for this inquiry, the fundamental goal of the TWU in approaching procurement issues in these spaces is also to ensure best practice. By extension, the TWU aims to maintain the best possible safety outcomes for all those working in the transport industry, and wish to ensure fair pay and conditions for bus drivers and waste workers.

6.2 In the space of buses, there are multiple recommendations the TWU can make to pave a way forward, and to allow the New South Wales Government to ensure best practice. Additionally, these recommendations can serve as a means to improve the overall quality of bus driver experience, the experience of the public, safety, economic outcomes, and other relevant factors.

6.3 The TWU would emphasise on the importance of consultation between the New South Wales Government and bus driver representatives, with their relevant union. Consultation is necessary on many fronts; particularly throughout the stages in which work is procured, or where contracts are being developed and awarded.



- 6.4 Typically, consultation between the TWU and private bus operators can only go so far without having the New South Wales Government at the table. As the body that awards contracts, the power to enforce and regulate lies in the Government's hands. It is the responsibility of Government to ensure that best practice can be achieved, and that can only be done by ensuring that terms in contracts can even allow for that. Consultation with relevant unions is key in reaching this.
- 6.5 It is necessary for there to be an evidence-reliant, competency-based minimum standard in both the obtaining and renewal of a bus driver authority. Currently, oversight of training is very limited, and becoming a practicing bus driver is all too easy. This is an issue that is only exacerbated by the lack of transparency and consultation between the New South Wales Government and relevant unions.
- 6.6 The Transport and Logistics industry BlueCard is a perfect example of what could be described as a competency-based minimum standard practice. The BlueCard, which is now completely digital, is a skills passport serving as a minimum entry level, work health and safety (WHS) training course that prepares workers and equips them with knowledge on basic safety needs and procedures. The ultimate goal of this course is to maintain consistent standards within the industry, and would serve to benefit well in the space of buses specifically.
- 6.7 Additionally, the TWU proposes that there is a need for an industry-wide set of minimum and pay and employment conditions to be established and applied throughout New South Wales, relevant to buses. This much is necessary in ensuring that bus drivers are not exploited as a result of the downwards pressure placed on them by operators as a result of competitive tendering. It is crucial that bus drivers are engaged under one specific set of clear conditions and a rate of pay, not multiple.
- 6.8 Minimum standards, by extension, can serve as a preventative measure in combatting the subsequent effects of the industry's current state, as detailed earlier within this submission. In the enforcement of minimum standards, it is necessary for the New South Wales Government to ensure that breaches of said standards would be penalised - it must be made clear that breaches will not be accepted.
- 6.9 In the TWU's mind, the idea of minimum standards would operate similarly to national employment standards, which are inalienable and a baseline entitlement for all workers. There is no intention for this suggestion to somehow affect or limit a bus operator's capacity to engage in enterprise agreement negotiations or other applications.
- 6.10 Of course, the TWU would then again bring attention back to the importance of consultation. The New South Wales Government should be willing to have open discussion with relevant unions when considering the future of procurement in buses and the development of contracts, and by extension, the much-needed enforcement of minimum standards and terms for these essential workers.
- 6.11 The TWU would raise the importance of maintaining a suitable level of quality for the provision of bus services when giving consideration to other areas, such as the development of Sydney Metro, and other large-scale infrastructure projects. The New South Wales Government



should prioritise meaningful improvements to existing services, such as buses, and ensure longevity, rather than pouring a vast abundance of resources into shiny new projects. The current New South Wales Bus task is well established, but is struggling.

- 6.12 There are many areas in New South Wales where commuters will still remain reliant on buses for a lack of alternative options, even after the completion of the Sydney Metro and other projects. The Sydney Metro cannot, and will not, service every single area that buses will, so it cannot be reasonably justified that the New South Wales bus task be left at the wayside in such favour of other projects – at least, certainly not to the degree it has been.
- 6.13 Buses have historically been regarded as a safe and reliable transport service for commuters in New South Wales. It is important that Sydney, being a world class city, has access to world class public transport. Though this may facilitate the desire to invest in Sydney Metro, it also means that New South Wales requires a bus industry that is of a high level in all fronts. This cannot be achieved by neglecting it.

7. Recommendations and Ways Forward in the Procurement Process in Waste Management

- 7.1 Given the long representational history of waste workers, the TWU has been vocal in the improvement of waste management provisions towards both operators and Governments.
- 7.2 Historically, the TWU has written to local Councils where residential waste contract tenders were expiring or about to be released for tender. Though certain recommendations and requests by the TWU may vary based on the specific tender, there are some aims that remain consistent across the board, such as fair level of base hourly pay, and or the maintenance of existing wage rates and conditions of existing employees, among others.
- 7.3 Often, the TWU would achieve what was asked for, and if not entirely, at least partly. An example of this is when the TWU exchanged with Randwick City Council for their tender. The TWU asked the following:
- That existing employees must be offered employment by the new contractor;
 - That existing employees must not be subject to any probationary period and that no offers of employment by the incoming contractor would contain any reference to a probationary period;
 - That the incoming contractor must recognise the continuity of service recognised by the existing contractor immediately prior to the contract commencement date;
 - That the incoming contractor must recognise any accrued but unused statutory entitlements (being annual leave – inclusive of leave loading – long service leave, and sick leave) of the existing employees immediately prior to the contract commencement date;
 - That the incoming contractor must maintain the wage rate and conditions applying to



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the existing employees immediately prior to the contract commencement date, including for any new employees employed by the incoming contractor;

- That the incoming contractor must increase wage rates for existing employees by a minimum of 3 per cent on every 12-month anniversary of the contract commencement date; and
- That the incoming contractor must allow employees to be given the opportunity to be informed of their rights and entitlements in paid inductions performed by the TWU.

7.4 In reference to the above, Randwick Council agreed to incorporate all of the conditions the TWU asked for into its tender documentation. Council also developed a 'tripartite agreement' between Council, the TWU, and Suez to formalise the agreement.

7.5 Another example is the TWU's engagement with Penrith City Council for its tender. The TWU asked for the following:

- Subject to prior contractors' collection staff receiving medical clearance from their doctor proving their ability to perform the duties required of them, the prior contractors' staff must be offered employment with the contractor;
- No prior contractors' collection staff must not be subject to any probationary period and no offers of employment will contain any reference to a probationary period;
- The contractor must recognise the continuity of service recognised by the prior contractors immediately prior to the contract commencement date for the prior contractors' collection staff;
- The contractor must recognise any accrued by unused annual leave and long service leave entitlements of the prior contractors' collection staff as at the contract commencement date;
- The contractor must ensure that each of the prior contractors' collection staff will be no less than \$31.44 per hour or part thereof with any wage rate to be increased by not less than the CPI on every 12-month anniversary of the contract commencement date.

7.6 In reference to the above, the TWU achieved the following:

- The tender closing date be extended for 2 weeks;
- Tenderers to the Waste Collection Services Tender RFT 17/18-07 be required to make any offer to any employees to be transferred from the previous contractor to the successful tenderer be on pay rates no less than the employees are on under the Enterprise Bargaining Agreement currently existing; and
- Employment entitlements including long service leave, annual leave, etc. be



transferred to the successful tenderer to provide continuity of entitlements.

- 7.7 The aforementioned examples serve as an example of just what sort of conditions the TWU has fought and advocated for in the Waste Management space, in relation to tendering and contracts. Naturally, the TWU maintain these views now, and in moving forward.
- 7.8 The New South Wales Government, at the time of this submission, has recently announced that it will provide job security and protection of terms and conditions for essential waste workers after months of industrial unrest at Cleanaway sites across the state. The new legislation ensures workers will keep their jobs and won't lose any existing terms and conditions if waste contracts change hands, which is a strong step forward, and a very welcome announcement on the TWU's part.
- 7.9 The new legislation would effectively mean that waste companies will no longer be able to undercut competitors using their workers' livelihoods as a bargaining chip. This outcome aligns with what the TWU has been fighting for alongside its members all along. However, this announcement adopts many, but not all, of the proposed protections for waste workers advocated by the TWU – said proposals being reflected in the TWU's exchanges with council, as provided above.
- 7.10 Notably, this is merely an amendment to the Regulation, rather than the Act. Regulations can be amended by the relevant minister without the need to go to parliament. The New South Wales Government should adopt these protections in full and enshrine them in the Local Government Act, rather than the Regulations, to ensure these require Parliament to vary them in the future, rather than a Local Government Minister.
- 7.11 In addition to the New South Wales Government's announcement, the TWU believe it is necessary for the Government to enforce further influence on local Councils in the management of their tenders. The example provided on just how the City of Sydney has turned its back on waste workers throughout the most challenging of times is unacceptable, and the TWU would urge the New South Wales Government to hold Councils to account. It simply isn't good enough for Council's to turn a blind eye when waste operators take absolute advantage of their workers.
- 7.12 As always, consultation remains to be a key component in ensuring the success of a waste management task. As demonstrated previously, the TWU has represented waste workers throughout its long history, and will continue to do so. Consultation must remain an open option between the not just the TWU and local Council, but with the New South Wales Government as well.

8. Recommendations and Ways Forward in Parcel Delivery and Construction

- 8.1 Perhaps unsurprisingly, the TWU's main focus in the parcel delivery space is to ensure that couriers are not exploited in a manner demonstrated through Amazon's models, and what was suggested through FedEx's proposals.
- 8.2 The industry needs enforceable standards to ensure safety and appropriate conditions. The TWU has been urging the Federal Government to establish an independent body that will set



binding standards, applicable across the entirety of transport – standards that will be achieved through consultation with industry.

- 8.3 On the level of the New South Wales Government, however, there are measures that can be taken. The New South Government, when procuring work through courier companies for its own requirements, should engage and/or award contracts to courier companies that have established contracts and conditions. There should be consideration to the existence of chapter 6 and minimum standards when engaging these companies; effectively, the New South Wales Government should give out contracts to companies that have industrial instruments in place for their contractors.
- 8.4 Companies that attempt to undercut others are likely to have poor conditions for their drivers, as well as low rates of pay. The best way to ensure couriers carrying out work for the New South Wales Government aren't being exploited is to review the conditions that a company has in place. Where applicable, consultation with the TWU may prove beneficial for the New South Wales Government.
- 8.5 There are a number of companies that evade or breach their obligations under Chapter 6. There are many elements within Chapter 6 of the Industrial Relations Act that could enjoy enhancement, and provide genuine benefits for not only the New South Wales Government, but contract carriers and principal contractors themselves. To this extent, the TWU would recommend the New South Wales Government consults with the TWU on how Chapter 6 can be improved to cover more vulnerable dependent contractors.
- 8.6 With that being said, the TWU believes it necessary to highlight certain elements that prove relevant. Currently, and historically speaking, there have been issues in identifying, or rather, acknowledging participants within parcel delivery supply chains, particularly on the part of the parcel delivery companies. There may be benefit in reviewing the definition of supply chain participants.
- 8.7 This should prove worthwhile considering attempts have been made to throw responsibility to the side, and in other cases, claims have been made that a company themselves is not a principal contractor, when in fact it is and can therefore be held accountable to the applications of Chapter 6. This would further serve to seal any potential cracks when it comes to liability within supply chains.
- 8.8 Due to the volatile nature of job security in the parcel delivery space, there should be consideration towards just how easy it is for a company to terminate a contract agreement. In the TWU's experience, it is not uncommon for contract carriers to suffer a termination under circumstances that cannot be considered justified.
- 8.9 Additionally, the TWU has observed a lack of provisions for training and skills development on the part of principal contractors in the courier space. It is all too common for principal contractors to ignore the idea of training their contractors, or providing a level of training that may be described as accurate. Indeed, contract carriers are often thrown to the wolves, in that the support they receive is typically limited, even if their experience as a courier is minimal.



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- 8.10 As a lack of training and information can be a safety issue in many cases, there is a real need to take these factors into consideration when procuring work through parcel delivery companies.
- 8.11 Similarly, when engaging construction companies for Government infrastructure projects, it is therefore necessary for the NSW Government to ensure they are awarding contracts to operators who have enforceable conditions for their workers, and/or suitable industrial instruments for any contract carriers they might source their work to.
- 8.12 The New South Wales Government should also pay particular attention to the remuneration rates offered by the companies they award contracts to, considering just how turbulent the topic of pay can be in construction. This much is necessary in ensuring the best outcomes for all parties involved, and maintaining best practice.

9. Conclusion

- 9.1 The TWU would like to thank the Standing Committee on Social Issues for the opportunity to prepare this submission. This inquiry is a necessary step forward in making meaningful progress in not only the bus and waste management industries, but in other key areas beyond transport as well.
- 9.2 The TWU stands in solidarity with both bus drivers and waste management workers. These essential workers have always provided an invaluable service to the communities of New South Wales. It was the bus drivers, waste management workers, and other transport workers who kept New South Wales functioning throughout the thick of the COVID-19 pandemic, and even in the trying times beyond, continue to do so.
- 9.3 The New South Wales Liberal Government had, for the longest time, disregarded the struggles of bus drivers and had only created a system that aimed to line the pockets of shareholders by placing downwards pressure on bus drivers – a system that is simply failing today. At this stage, it is imperative for meaningful change to be made if New South Wales' essential bus task is to remain viable in the long-term. The contrary is simply not an option for the public, nor is it any option for the current bus drivers in the industry.
- 9.4 Privatisation and competitive tendering have created what can best be described as a mess. However, as outlined in this submission, there are options in moving forward. It is unacceptable and entirely inequitable that bus drivers are expected to work harder and faster to compensate for the state of the industry, all the while, their pleas are left ignored, and they are subject to the undeserved criticism and hostility of the public eye and every day commuters on the job.
- 9.5 The New South Wales Government's announcement to protect the job security of workers in waste management is, again, a very welcome effort. The TWU supports this commitment without reservation, but urge the Government to be open for discussion and consultation between themselves and the TWU when it comes to waste management practices and procurement of labour.
- 9.6 Furthermore, the TWU would be open to further discussion with the New South Wales



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Government regarding common practices and issues in both parcel delivery and construction. To ensure best practice, the New South Wales Government should be open to discussion with the TWU, and should pay careful consideration towards the practices of parcel delivery and construction operators, as well as the conditions their contract carriers and/or workers are subject to.