

4 October 2016

NSW Procurement Board

C/- nswbuy@finance.nsw.gov.au

Dear Sir/Madam

FEEDBACK ON DRAFT HUMAN SERVICES AGREEMENT

The Association of Children's Welfare Agencies (ACWA) is the NSW non-government peak body representing the voice of community organisations working with vulnerable children, young people and their families. We work with our members, partners, government and non-government agencies and other peak bodies to bring about positive systemic reform that will deliver better outcomes to the lives of children and young people, including those living in out-of-home care.

In response to the NSW government's invitation to comment on the draft Human Services Agreement and Funding and Service Schedule, we provide comments outlined below.

1) Comments on the draft Human Services Agreement Standard Terms and the draft Funding and Service Schedule

Please find **enclosed** a marked-up copy of the draft Agreement and Schedule, setting out our comments on the issues we have identified in each document.

Executive summary of comments on the draft Agreement and Schedule

Agreement

1. Service Provider's key obligations should be clarified. Refer to cl.1.1(c)
2. A further obligation should be added at cl.1.2 preventing Human Services from varying the Services required to be provided under an Agreement, unless certain conditions are met.
3. Notified Policies containing material changes should not bind Service Providers without having been subject to a consultative process. Refer to cl.1.5(a).

4. We query the purpose of providing Personnel information under cl.1.6(b) and the way this may operate in conjunction with cl.8.3 such that the Personnel information may provide a basis for termination.
5. We disagree that Service Providers should cover the wages of Personnel while on training, under cl.1.6(f).
6. Interest should be payable as a consequence for late payment of the Funding, refer to cl.2.1.
7. The meaning and treatment of 'misapplied funds' under cl.2.2 should be clarified.
8. Human Service should only be able to require Funds be repaid under cl.2.2(c) where the Funds are *unspent and uncommitted*.
9. The IP license at cl.3.2(a) should be restricted.
10. The IP warranty at cl.3.2(c) should be removed.
11. Personnel should not be individually required to sign confidentiality agreements with Human Services. Refer to cl.3.5(e).
12. A provision allowing for a liability cap should be reinserted at cl.4.3.
13. The disputes that must and/or may be referred to the dispute resolution process under cl. 4.5, need to be clarified.
14. The Agreement should retain the obligation for Human Services to provide reports to the Service Provider on request, at cl.5.1.
15. The cost of providing access to records should be borne by Human Services, at cl.5.3.
16. The Agreement should retain a timeframe within which audits may be conducted, under cl.5.4.
17. Ability to suspend services should be removed from the Agreement, at cl.7.1.
18. The best interests of the child should be a paramount consideration, and circumstances where termination without fault is an option under cl.8.2 need to be refined.
19. Human Services should be required to consult with relevant regulators, prior to being able to exercise the right to terminate under cl.8.3.
20. The terms 'serious breach' and 'several minor breaches' need to be clarified, at cl.8.3.
21. The events listed at cl.8.3(a) should not amount to grounds for immediate termination without an opportunity for resolution, e.g. under the dispute resolution process. Furthermore, the insolvency of an auspiced entity or subcontractor, and negative effect on Human Services' reputation (the fifth and last dot points) should be omitted from cl.8.3.
22. Transition of services should not be 'at no cost' under cl.8.4(c).
23. The obligation to repay unspent Funds under 8.4(d) should only be required subject to the operation of cl.2.2.
24. Service Providers should not be required to warrant that they have *no* legal proceedings threatened or occurring against them, under cl.9.2.

Schedule

1. Consequences for not meeting Performance and outcomes measures, and Milestones should be clarified. Refer to cl.2.2 and cl.2.3
2. Furthermore, Government and third party-related factors should be taken into account in measuring performance and outcomes at cl.2.2 and 2.3.
3. Funding – payment installments should be made on signing the Schedule and at regular intervals thereafter. Refer to cl.3.2.
4. Notifications – requirement to notify Human Services of funding received from other sources should be an obligation to seek to notify in good faith. Refer to cl.6.3(c).
5. Reputational Proceedings needs to be defined. Refer to cl.6.3(e).

2) Responses to the Key Questions posed in the Guide

We are currently settling responses to the Key Questions posed in the Guide to the NSW Government's draft Human Services Agreement and will provide our responses by the end of this week.

We hope that our comments above and in the enclosed documents are of assistance in the NSW Government settling a balanced suite of documents, which enable a partnership with the sector, such as to benefit those individuals who we seek to serve.

Furthermore, ACWA as a peak-body believes that there will be great insights received from the NGO sector in the present consultation process. Much is to be gained by the sharing of that information and a further discussion prior to the NSW Government settling on the final form of documents. In this regard, it would be ACWA's strong request that the NSW Government circulate a document sharing with those who had provided submissions a list of the themes emerging and relevant details, and then hold a forum for final contributions to be given in person by a representative from each organisation that has responded. Alternatively if the NSW Government is not in a position to do this, then ACWA would certainly be willing to host its own forum for its members who had contributed and would welcome the opportunity for the NSW Government to send senior representatives to hear the feedback and consider it in good faith, prior to finalising any draft documentation.

We look forward to hearing further in this regard. If we can be of any further assistance in this consultation process, please do not hesitate to contact Wendy Foote at wendy@acwa.asn.au.

Yours faithfully



Dr Wendy Foote
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Association of Children's Welfare Agencies