

The Senate

Legal and Constitutional Affairs
References Committee

Impact of changes to service delivery
models on the administration and running
of Government programs

February 2020

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List of Recommendations

Recommendation 1

- 2.83 The committee recommends that the Australian government assess all current and future proposals for outsourcing government services against a 'public interest test', which includes flow-on economic and employment impacts. Results of the public interest test, along with a comprehensive business case, must be made publicly available in a timely fashion.

Recommendation 2

- 2.84 The committee recommends that the Australian government provide a commitment that services dealing with complex cases and vulnerable people should not generally be considered suitable for outsourcing.

Recommendation 3

- 2.85 The committee recommends that the Australian government, in consultation with relevant stakeholders, implement arrangements to make outsourcing contracts publicly available, unless there are published national security concerns.

Recommendation 4

- 2.86 The committee recommends that the Commonwealth public service Average Staffing Level (ASL) cap be lifted immediately.

Recommendation 5

- 2.87 The committee recommends that the Australian government ensure any further projects that involve automated decision-making are not pursued if automation reduces service quality, impacts upon fairness, or reduces equity of access.

Recommendation 6

- 2.88 The committee recommends that Commonwealth departments and agencies have regard to the Commonwealth Ombudsman's guidance on best-practice in automation at the earliest stages of any relevant project.

Recommendation 7

- 3.97 The committee recommends that the Australian government does not proceed with the *Request for Tender (RFT) Delivering Visa Services for Australia - Global Digital Platform*, and seeks instead to fund and deliver an in-house solution.

Chapter 1

Introduction

Terms of reference

1.1 On 1 August 2019, the Senate referred an inquiry into the impact of changes to service delivery models on the administration and running of Government programs to the Legal and Constitutional Affairs References Committee for inquiry and report by 16 October 2019. On 16 September 2019, the Senate extended the reporting date to the last sitting day in February 2020.

1.2 The committee was asked to inquire into:

The impact of changes to service delivery models on the administration and running of Government programs, with particular reference to:

- (a) the privatisation of Australia's visa and citizenship program, including:
 - (i) the integrity of Australia's visa and citizenship system,
 - (ii) the commercial implications and increased costs to industry, with particular regard for the tourism and higher education sectors,
 - (iii) the implications to national security, data security and privacy, and
 - (iv) the risk to public sector employment – especially rural and regional employment – through service delivery model changes; and
- (b) Centrelink's Robodebt compliance and outsourced debt collection program, including:
 - (i) the integrity and impact of the automated debt collection processes,
 - (ii) the limitations and impact of Robodebt collection methods,
 - (iii) the identification of inaccurate debts – made without human oversight,
 - (iv) the impact to public sector employment – especially on the capacity and adequacy of staffing level, and
 - (v) the review and appeals process for debt notices; and
- (c) the broader outsourcing of functions in the Human Services portfolio and at the National Disability Insurance Agency, including:
 - (i) the processes for contracting and tendering under the outsourcing of services,
 - (ii) the impact of capped staffing numbers and the efficiency dividend at government departments/agencies,
 - (iii) the future planning and preparation for the outsourcing of departmental functions,
 - (iv) the impact outsourcing has on service provision, and

- (v) the impact on current public sector employment and the risks to future public sector employment;
- (d) the outsourcing of security vetting services in the Australian Government Security Vetting Agency, including:
 - (i) the processes for contracting and tendering under the outsourcing of services,
 - (ii) the impact of capped staffing numbers and the efficiency dividend at government departments/agencies,
 - (iii) the future planning and preparation for the outsourcing of departmental functions,
 - (iv) the impact outsourcing has on service provision, and
 - (v) the impact on current public sector employment and the risks to future public sector employment; and
- (e) any related matters.

Conduct of the inquiry

- 1.3 The committee advertised the inquiry on its website and wrote to a number of organisations and individual stakeholders inviting them to make a submission by 23 August 2019.
- 1.4 The committee received 44 submissions, which are listed at Appendix 1. A public hearing was held in Canberra on 1 November 2019. A list of witnesses who appeared before the committee is listed at Appendix 2.

Acknowledgement

- 1.5 The committee thanks all those who made submissions and gave evidence at the public hearing.

Notes on references

- 1.6 References to the *Committee Hansard* are to the proof version. Page numbers may differ between the proof and final version.

Structure of the report

- 1.7 This report has three chapters. This first chapter provides an introduction.
- 1.8 Chapter 2 looks at the issue of outsourcing and privatisation of government services generally, and addresses all of the terms of reference except (a). It includes the committee's view and recommendations relating to privatisation and outsourcing generally.
- 1.9 Chapter 3 considers term of reference (a), the privatisation of Australia's visa and citizenship program. It concludes with the committee's view and recommendation.

Chapter 2

Impacts of outsourcing and privatisation

- 2.1 The committee was asked to consider the impacts of outsourcing and privatisation on the administration of government services. A number of key concerns were raised in evidence. These related to how outsourcing and privatisation of government services impacts upon:
- constitutional responsibilities of the government in relation to service provision;
 - ministerial accountability;
 - stability, quality and oversight of outsourced services;
 - the extent to which outsourcing serves the public interest;
 - economic impacts of outsourcing; and
 - issues of transparency and access to information in relation to services that are outsourced.
- 2.2 This chapter also looks at the issue of automation in relation to government services, including evidence around Centrelink's 'Online Compliance Intervention' – the so-called 'robodebt' scheme.

Constitutional/democratic responsibilities

- 2.3 The Australian government has constitutionally-enshrined rights and responsibilities in respect to the provision of many social services and benefits. These are outlined in section 51 of the Constitution and include:
- invalid and old-age pensions;
 - maternity allowances;
 - widows' pensions;
 - child endowment;
 - unemployment;
 - pharmaceutical, sickness and hospital benefits;
 - medical and dental services; and
 - benefits to students and family allowances.¹
- 2.4 The Centre for Comparative Constitutional Studies highlighted these responsibilities, submitting that the Commonwealth government cannot delegate or abrogate these responsibilities through outsourcing human services. Centre Co-Director, Dr Kristen Rundle, warned that any outsourcing process must consider including 'appropriate mechanisms of ministerial

¹ Section 51(xxiii) and section 51(xxiiiA).

accountability’ because ‘ministerial accountability to parliament is the backbone of our constitutional system’.²

- 2.5 Dr Rundle explained that introducing private providers into the system of service provision can complicate the chain of responsibility of ministers to the parliament, because ‘commercial-in-confidence and other elements of contracting...can operate to shield the private actors from the full extent of ministerial accountability to parliament’.³

- 2.6 The Centre for Comparative Constitutional Studies’ major concern was in protecting what it saw as a constitutionally-enshrined right to equality for all citizens in relation to the provision of the services outlined in Section 51. Dr Rundle said:

We’re concerned to ensure that citizens have the legal standing with respect to government in relation to government services delivery that is equal to them—that there are no barriers to accountability, including ministerial accountability, but other forms of accountability as well....The Constitution sets up a system for the government of people framed by the authority of the Constitution and the laws of the parliament. We have an expectation that the administration of those laws and programs, with respect to them, will be intelligible, fair and respectful to those who they affect.⁴

- 2.7 The Centre for Comparative Constitutional Studies argued the robodebt scheme enlivens a number of significant constitutional issues. Specifically, the Centre articulated its view that, ‘[i]t is essential that the relationship between the Commonwealth and those subject to its administrative power be designed and sustained in a manner that is intelligible and respectful’.⁵

- 2.8 Witnesses argued that poor or inequitable delivery of essential government services and benefits undermines faith in democracy. Dr Travers McLeod from the Centre for Policy Development added:

...poor service delivery outcomes undermine trust in government and diminish our democracy. It would be remiss not to mention yesterday’s interim report by the aged care royal commission, appropriately titled Neglect, which makes that clear.⁶

² Dr Kristen Rundle, Co-Director, Centre for Comparative Constitutional Studies, Melbourne Law School, University of Melbourne, *Committee Hansard*, 1 November 2019, p. 3.

³ Dr Rundle, Centre for Comparative Constitutional Studies, *Committee Hansard*, 1 November 2019, p. 3.

⁴ Dr Rundle, Centre for Comparative Constitutional Studies, *Committee Hansard*, 1 November 2019, p. 3.

⁵ Centre for Comparative Constitutional Studies, *Submission 3*, p. 3.

⁶ Dr Travers McLeod, Chief Executive Officer, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 1.

2.9 Anglicare Australia submitted:

Our central contention is that Australian Government services to citizens should be person-centred, transparent, timely and effective for every member of the community who needs to access them. They should be treated and built as fundamental state infrastructure for the creation of a better society.⁷

2.10 Dr McLeod also expressed the view that Australians *prefer* to see essential services delivered by government:

Our research over two years suggest that three-quarters of Australians think it's important for government to maintain the capability and skills to deliver human services directly. Fewer than one in 10 people think this is not important.⁸

2.11 This view was echoed by the Community and Public Sector Union (CPSU), which referred to research that suggests 82 per cent of Australians 'want government to retain the skills and capability to deliver services directly'.⁹

2.12 The CPSU also proposed that failures in projects to privatise or outsource public services are 'more than an issue of public administration' and go 'to the heart of our democracy'.¹⁰

Stability and security of outsourced services

2.13 Evidence presented to the committee by a number of witnesses focussed on the stability and security of outsourced services compared with services that are delivered by government entities.

2.14 Public Services International (PSI) has conducted a significant amount of research into Australian and international experiences of outsourcing. Its representative, Mr Michael Whaites, drew the committee's attention to examples from the United Kingdom, including 'the collapse of Carillion', a large company that held many outsourced government contracts in the UK. Mr Whaites said:

That was a 1.5-billion-pound company, and when it collapsed it caused massive economic disruption in the UK, and disruption to public services and infrastructure expansion.¹¹

2.15 Mr Whaites argued that '[p]rivatisation is a failed model', saying that, in Australia, seven hospital privatisations, the privatisation of TAFE and the

⁷ Anglicare Australia, *Submission 35*, p. 4.

⁸ Dr McLeod, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 2.

⁹ Community and Public Sector Union (CPSU), *Submission 32*, p. 3.

¹⁰ CPSU, *Submission 32*, p. 2.

¹¹ Mr Michael Whaites, Oceania Sub-regional Secretary, Public Services International (PSI), *Committee Hansard*, 1 November 2019, p. 31.

privatisation of aged-care have all failed and negatively impacted on communities.¹²

- 2.16 Submitters proposed that outsourcing human service functions may have flow-on effects for other social service providers. For instance, Homelessness NSW reported that its members, who provide services to assist the homeless, have experienced increasing difficulties 'liaising with government agencies, particularly DHS, to ensure timely and correct advice for their clients.'¹³
- 2.17 Dr Paul Barnes focussed on issues related to outsourcing services for the Australian Government Security Vetting Agency (AGSVA). Dr Barnes cautioned that government remains accountable for 'errors in service provision' made by third party contractors. He suggested the government focus on crisis and continuity planning, and strictly vetting providers in terms of their document and data management and security.¹⁴
- 2.18 The Department of Defence responded to concerns about the risks associated with outsourcing AGSVA functions, saying:

All ESVS panel members must be members of the Defence Industry Security Program (DISP). DISP members are required to apply Defence Security policies, including obtaining certification of physical premises and information systems, and personnel clearances for staff handling classified or sensitive information. All DISP members undergo Foreign Ownership Control and Influence (FOCI) checks and are required to provide reporting on security incidents and any FOCI changes.

DISP security requirements are reinforced by the recently established Defence Industry Security Office (DISO), which has responsibility for assuring DISP members compliance. DISO conducts reviews and audits of DISP members (including ESVS panel members) to ensure appropriate security policies, systems and compliance regimes are in place.¹⁵

Service quality

- 2.19 Witnesses suggested human services delivered by government entities often provide better service quality than those delivered by private entities. PSI referred to research that found users rate services delivered by government as being 'more accessible, more affordable, of higher quality and easily more accountable than those delivered by private companies and even by charities'.¹⁶

¹² Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 31.

¹³ Homelessness NSW, *Submission 39*, p. 2.

¹⁴ Dr Paul Barnes, *Submission 18*, [p. 1].

¹⁵ Department of Defence, *Submission 25*, p. 2.

¹⁶ Dr McLeod, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 2.

- 2.20 Per Capita submitted that the privatisation of 2,750 Department of Human Services call centre jobs ‘has led to more mistakes with services being disrupted and further delays to the community’.¹⁷
- 2.21 The Department of Human Services submitted all of its staff, including non-APS employees, ‘receive extensive training’, learning and development, and ‘are held to the same high standards of performance, accountability and customer service’ as permanent APS staff.¹⁸
- 2.22 Vulnerable and disadvantaged citizens, in particular, may be disadvantaged when human services are outsourced, witnesses claimed. PSI pointed to the example of job network outsourcing, saying:
- ...the experience with employment services was a crucial case and that this entirely outsourced system had blurred responsibility for service outcomes and led to the emergence of pernicious ‘grand alibis’ where no one organisation was held accountable for service problems or failures. These findings were reinforced in December last year by the McPhee review, which was released by the then Minister O’Dwyer. Here is a \$6.5 billion system with poor outcomes, waiting times of more than five years for the most vulnerable, case loads of one to 148 and employer penetration of just four per cent. A primary focus on compliance has meant disadvantaged jobseekers—those with complex needs—stand little chance of success in the procurement based system.¹⁹
- 2.23 Dr McLeod reported that the Centre for Policy Development has been conducting research into the ways in which ‘cycles of disadvantage have been accelerated by service failure and fragmentation’. He pointed to examples where disadvantaged citizens were subject to ‘repeated assessments’ and had to ‘tell their story over and over again’, and where people were treated differently by private service providers depending on how much funding they were able to access. The research ultimately found:
- ...that a predisposition by recent governments to outsource human services risks poor outcomes for the most disadvantaged Australians and erodes public-sector capability to design and, where necessary, deliver effective services for our most vulnerable people.²⁰
- 2.24 The Centre for Policy Development also highlighted issues with the privatisation of the aged care system. Dr McLeod argued that treating older people as consumers was problematic because many ‘are not in a position to meaningfully negotiate prices, services or care standards with aged-care providers’. He added that older people have ‘little choice’ within the aged care

¹⁷ Per Capita, *Submission 20*, p. 4.

¹⁸ Department of Human Services, *Submission 24*, p. 3.

¹⁹ Dr McLeod, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 2.

²⁰ Dr McLeod, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 2.

market, meaning aged care is not a ‘consumer driven market’, though it may appear to be one.²¹

National Disability Insurance Scheme

2.25 Some submitters expressed positive views about certain aspects of outsourcing in the delivery of the National Disability Insurance Scheme (NDIS), including Uniting Communities, which submitted:

Outsourcing service delivery has a positive impact on service provision including efficient use of a localised work force, leveraging existing community relationships and infrastructures and increased flexibility and responsiveness with of not for profit organisations.²²

2.26 However, other submitters were concerned about outsourcing of NDIS functions, including Queensland Advocacy Incorporated, which submitted that the decision to outsource the operation and staffing of the NDIS call-centre to private multinational company, Serco, was ill-advised and likely to negatively impact people with disabilities and their carers.²³

2.27 Queensland Advocacy presented the results of a survey it conducted of users of the NDIS call centre, which found:

...a significant proportion if not a majority of callers to the Serco-run service are not satisfied with the understanding, knowledge or interpersonal skills of call takers, or the gate-keeping function of the service.²⁴

2.28 Dr Darren O’Donovan from La Trobe Law School criticised the ‘heavy reliance’ within the NDIS on ‘insourced expert reports and legal representation in tribunal matters’. Dr O’Donovan suggested the NDIA should be funded to increase its own legal team instead.²⁵

2.29 People With Disabilities Western Australia also reported significant stakeholder issues with the call centre and other aspects of outsourced service delivery, including that call centre staff lacked knowledge and training.²⁶

2.30 This view was echoed by People With Disabilities Australia, which recently conducted a survey of around 900 people with disability which found ‘most’ (67 per cent) reported ‘difficulty accessing government services and agencies’,

²¹ Dr McLeod, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 2.

²² Uniting Communities, *Submission 15*, [pp. 11–12].

²³ Queensland Advocacy Incorporated, *Submission 12*, p. 4.

²⁴ Queensland Advocacy Incorporated, *Submission 12*, p. 21.

²⁵ Dr Darren O’Donovan, *Submission 16*, [p. 11].

²⁶ People With Disabilities Western Australia, *Submission 33*, p. 3.

and many 'had experienced discrimination and disrespect from government agencies including Centrelink and the NDIA'.²⁷

- 2.31 Consumers are not always individual citizens. The Australian Small Business and Family Enterprise Ombudsman submitted evidence on negative impacts caused by the NDIA outsourcing assessments of incorporated NDIS service providers to private auditors. The Ombudsman reported:

Companies are required to go through surveillance audits in the second and third year of their participation. The outsourced auditors apply the same processes for small providers delivering one service to 10 clients and large providers delivering 10 services to 100 clients.²⁸

Oversight and quality control

- 2.32 Concerns were raised that outsourced services may not be subject to the same oversight as government-run services, especially in relation to how well they deliver services for Australian citizens.
- 2.33 The Australian Council of Social Service (ACOSS) submitted that it is 'very concerned' about the outsourcing of Department of Human Services 'frontline work to private operators'. ACOSS suggested these private operators may not have 'an acceptable level of expertise', and reported anecdotal evidence of 'poor service provision' by private operators.²⁹
- 2.34 The committee asked the Commonwealth Ombudsman to comment on these concerns. Deputy Ombudsman, Ms Jaala Hinchcliffe explained that the role of the Ombudsman is to provide oversight for Commonwealth departments and agencies and this includes 'contract service providers where they have entered into a contract with the Commonwealth agencies to deliver services on their behalf'.³⁰
- 2.35 The Ombudsman clarified that it is careful when assessing the quality of service provision by private companies not to publish any information that is 'protected by legal professional privilege or potentially commercially sensitive'. However, meeting these requirements does not prevent the Ombudsman from publishing its observations and making 'recommendations that are clear and are able to be implemented by departments'.³¹
- 2.36 As with its oversight role for government agencies, the Ombudsman confirmed that it does not 'make binding decisions' for service providers. Its

²⁷ People With Disabilities Australia, *Submission 34*, [p. 2].

²⁸ Australian Small Business and Family Enterprise Ombudsman, *Submission 9*, [p. 1].

²⁹ Australian Council of Social Service (ACOSS), *Submission 2*, p. 4.

³⁰ Ms Hinchcliffe, Deputy Ombudsman, Office of the Commonwealth Ombudsman (Commonwealth Ombudsman), *Committee Hansard*, 1 November 2019, p. 17.

³¹ Ms Hinchcliffe, Commonwealth Ombudsman, *Committee Hansard*, 1 November 2019, p. 17.

powers are limited to recommending changes and improvements to service delivery and administration, for which the ministers and departments are then responsible.³²

Public interest test

2.37 Critics of outsourcing of government services were especially concerned that outsourcing often fails to meet a 'public interest test'. Dr McLeod expressed the Centre for Policy Development's view that:

...some areas of human services are so fraught that the public role cannot simply be procurement and contract management...any outsourcing needs to pass a net public interest test to examine, as appropriate, the financial, economic, social and administrative impact, including reputational risks, loss of capability and public accountability.³³

2.38 PSI argued that outsourcing rarely leads to 'improved services and efficiency' as promised, with evidence generally demonstrating that outsourced projects fail to delivery savings or efficiencies. 'Public sector delivery and management is proven', PSI said, to be 'the most efficient modality'.³⁴

2.39 Mr Jason Ward, Principal Analyst at the Centre for International Corporate Tax Accountability and Research (CICTAR), drew the committee's attention to a number of examples from the UK where outsourcing projects had failed to serve the public interest. These included the case of Concentrix, a subsidiary of a US multinational, which was awarded a contract to distribute benefits in the UK. Mr Ward said:

It created such a disaster that the government had to spend tens of millions of pounds cleaning up the mess left behind, and people literally died because of the company's inability to deliver benefits to the recipients that were intended to get benefits. Then the same company ends up getting a contract to do Centrelink services in Australia after a track record of disaster in the UK.³⁵

2.40 Mr Ward recommended governments introduce much more thorough vetting of companies seeking to win contracts in Australia.³⁶

2.41 The CPSU argued that 'core government functions like visa processing and areas of social welfare' should remain the domain of the public service. This is because retaining these services in the public sphere 'provides accountability and transparency and direct lines through to government'. The CPSU

³² Ms Hinchcliffe, Commonwealth Ombudsman, *Committee Hansard*, 1 November 2019, p. 17.

³³ Dr McLeod, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 2.

³⁴ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 31.

³⁵ Mr Jason Ward, Principal Analyst, Centre for International Corporate Tax Accountability and Research (CICTAR), *Committee Hansard*, 1 November 2019, p. 4.

³⁶ Mr Ward, CICTAR, *Committee Hansard*, 1 November 2019, p. 4.

presented the results of a number of community surveys that it believes suggest the Australian public prefers 'core government services' to be delivered by the public service.³⁷

Economic impacts

2.42 Outsourcing of government services may have impacts on the economy that are unexpected or unforeseen. The CPSU pointed to the loss of jobs that can sometimes be associated with outsourcing projects, and also the possible reduction in wage levels. When government functions are transferred to private entities, the CPSU claimed, 'the wages that are paid to the workers doing that work invariably drop, and so the economic benefits to the community also drop in concert'. National Secretary, Ms Melissa Donnelly, added:

Essentially, the procurement contract has to have a profit that's taken out of the equation per transaction, and that's money that isn't going to those workers and isn't going to their communities or the local economy.³⁸

2.43 The Australian Council of Trade Unions (ACTU) submitted that outsourcing has 'undermined' the government's ability to deliver essential public services, 'while at the same time forcing workers to accept insecure work and inferior wages and conditions'.³⁹ In outsourced models of service delivery, 'subsidies to the for-profit outsourced services end up being larger than the imposition to the budget due to public provision'.⁴⁰

2.44 In relation to the use of casual, non-ongoing and labour hire employees, the Department of Human Services submitted: 'Non-APS staff arrangements are used as a timely, cost-effective way to complement, not replace, the Department's current service delivery workforce'.⁴¹

2.45 Another issue raised by submitters was tax avoidance. CICTAR has studied a number of companies that provide contracted services for government, and found that many exhibit 'aggressive tax avoidance behaviour'. Mr Ward suggested that Bupa is one such company. He said:

[Bupa] received over half a billion dollars in providing aged-care services, had to reach a settlement with the ATO for \$157 million and then, earlier this year, was rewarded with a \$3.4 billion contract to provide medical services to the Australian Defence Forces. Companies like this shouldn't be

³⁷ Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 27.

³⁸ Ms Lisa Newman, Deputy National President, CPSU, *Committee Hansard*, 1 November 2019, p. 28.

³⁹ Australian Council of Trade Unions (ACTU), *Submission 14*, [p. 2].

⁴⁰ ACTU, *Submission 14*, [p. 4].

⁴¹ Department of Human Services, *Submission 24*, p. 1.

rewarded with public dollars after demonstrating clearly aggressive tax behaviour in Australia and globally.⁴²

- 2.46 Mr Ward acknowledged that the government has taken steps to better assess companies in relation to their tax behaviour. New regulations introduced in 2019 require companies with over \$4 million worth of federal government contracts ‘to have a clean bill of health’ from the Australian Taxation Office. However, Mr Ward suggested the new regulations are ‘a fairly weak and ineffective measure’.⁴³
- 2.47 PSI was also concerned about the economic impacts of public money going to companies that exhibit tax avoidant behaviour. Mr Whaites referred to a 2014 case in the UK, where the UK Home Office outsourced visa processing to Dubai-based company VFS, and French company Sopra Steria. According to PSI, VFS was ‘structured through several holding companies located in known tax havens’. Mr Whaites concluded that ‘when finances that would have come to government go to private entities, that money invariably leaves the local economy’.⁴⁴
- 2.48 Referring to international examples, Mr Whaites explained:
- ...there has been a significantly increasing number of cases of renationalisation or remunicipalisation, particularly in Europe. The reason why councils, governments and federal governments are doing that is it is cheaper to do so.⁴⁵
- 2.49 Mr Whaites added that PSI knew of ‘at least 830 cases of remunicipalisation or renationalisation of what were formerly public services’ but stressed that free trade agreements can make it difficult to bring public services back under government control.⁴⁶

Transparency

- 2.50 A major concern for many submitters was the way in which outsourcing and privatisation can impact transparency. Submitters argued, for instance, that there was not always adequate access to information about government contracts.
- 2.51 CICTAR recommended that all large contracts should be ‘publicly available and accessible in a database’, unless there is a reason for confidentiality that relates to national security. Mr Ward also argued that freedom of information

⁴² Mr Ward, CICTAR, *Committee Hansard*, 1 November 2019, p. 4.

⁴³ Mr Ward, CICTAR, *Committee Hansard*, 1 November 2019, p. 4.

⁴⁴ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 30.

⁴⁵ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 33.

⁴⁶ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 33.

provisions are ineffective, and 'it's very difficult to get information around public contracting'.⁴⁷

- 2.52 Confidentiality clauses in outsourcing contracts were also seen as a barrier to transparency. The Centre for Policy Development's 2015 report, *Grand alibis*, called for the Australian National Audit Office to be given the right to review these clauses.⁴⁸
- 2.53 PSI called for 'real transparency and accountability in privatised services', saying commercial-in-confidence provisions prevent this, so 'the public cannot follow the money'.⁴⁹
- 2.54 Per Capita reported that it is 'impossible' to locate the data required to understand how much public money is spent on engaging temporary staff in relation to outsourced services. However, Per Capita cited data from Austender indicating approximately \$750 million was spent in 2016-2017 'on temporary personnel', which 'represents an almost three-fold increase over the last four years'. Per Capita concluded: 'Public expenditure, including the engagement of staff to deliver public services, should be fully transparent'.⁵⁰

Automation and robodebt

- 2.55 Another area of discussion was around the automation of government services, especially automated decision-making processes.
- 2.56 The Commonwealth Ombudsman was asked if complaints were higher in relation to automated decision-making. Ms Hinchcliffe replied:
- We see complaints about issues rather than about whether or not something is automated. But we do see a high number of complaints about the Department of Human Services, and a lot of those complaints do relate to automated data matching. Some of those complaints will relate to difficulty in understanding the system.⁵¹
- 2.57 The Ombudsman acknowledged that there are potential benefits to automation, as faster decision-making benefits citizens and 'large numbers of decisions can be made faster', potentially saving government resources. However, the Ombudsman also cautioned that 'particular issues' need to be taken into account when designing automated decision-making systems.⁵²

⁴⁷ Mr Ward, CICTAR, *Committee Hansard*, 1 November 2019, p. 4.

⁴⁸ Dr McLeod, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 5.

⁴⁹ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 31.

⁵⁰ Per Capita, *Submission 20*, p. 9.

⁵¹ Mr Paul Pfitzner, Senior Assistant Ombudsman, Complaints Management and Education Branch, Office of the Commonwealth Ombudsman, *Committee Hansard*, 1 November 2019, p. 18.

⁵² Ms Hinchcliffe, Commonwealth Ombudsman, *Committee Hansard*, 1 November 2019, p. 21.

- 2.58 To address some of these issues, the Ombudsman reported that it is currently updating 'a best practice guide on automated decision-making', which it originally published in 2007.⁵³
- 2.59 The most significant example of automation discussed in submissions to the inquiry was the robodebt scheme, with all submissions received being highly critical of the automated data matching component of the scheme.⁵⁴
- 2.60 This report does not address robodebt in depth for a number of reasons. Firstly, the scheme is the subject of an ongoing inquiry by the Senate Standing Committees on Community Affairs, which is due report by 25 March 2020. That committee has conducted five public hearings and published 67 submissions and an interim report addressing the scheme in detail.⁵⁵
- 2.61 Secondly, the Department of Human Services ceased the practice of raising debts based purely on its averaging of Australian Taxation Office income data from 19 November 2020. The department also indicated it would review previous cases.⁵⁶
- 2.62 Media reports suggest the government changed its position on the use of automated 'income averaging' as the sole trigger for issuing debt letters because the practice was not lawful.⁵⁷
- 2.63 Shortly after the government ceased the practice, the Federal Court ruled in favour of a plaintiff who had challenged a debt raised against her by the department. The judgment said 'the demand for payment of an alleged debt... was not validly made', and that a notice issued garnishing the plaintiff's tax return was 'not a lawful issued notice'.⁵⁸

⁵³ Ms Hinchcliffe, Commonwealth Ombudsman, *Committee Hansard*, 1 November 2019, p. 17.

⁵⁴ See for instance: Victoria Legal Aid, *Submission 6*, p. 3.

⁵⁵ Senate Standing Committees on Community Affairs, *Centrelink's compliance program*, at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Centrelinkcompliance, accessed 13 February 2020.

⁵⁶ Services Australia, 'Media release: Online Income Compliance Programme Update', *Media Hub*, at <http://mediahub.humanservices.gov.au/media/online-income-compliance-programme-update>, accessed 13 February 2020.

⁵⁷ Paul Farrell, 'Government halting key part of robodebt scheme, will freeze debts for some welfare recipients', 19 November 2019, *ABC News online*, <https://www.abc.net.au/news/2019-11-19/robodebt-scheme-human-services-department-halts-existing-debts/11717188> (accessed 22 January 2020).

⁵⁸ Shalailah Medhora, 'Federal Court rules robodebt 'unlawful' in significant court case', 27 November 2019, *ABC News online*, <https://www.abc.net.au/triplej/programs/hack/federal-government-loses-major-robodebt-case/11742494> (accessed 22 January 2020).

Further work on automated decision-making

2.64 The submission from the Australian Human Rights Commission (AHRC) cautioned that:

Evidence is emerging that shows how automated decision making, used in the delivery of social services ranging from social security to child protection, can have the unintended impact of entrenching disadvantage, with a disproportionate negative impact on minority and vulnerable groups.⁵⁹

2.65 The AHRC also revealed that it is conducting consultations as part of a project on human rights and technology. The project is 'examining the impact of new and emerging technologies using a human rights framework', and will consider how human rights issues 'are engaged by the use of AI technologies, and in particular decision making which involves use of AI'.⁶⁰

2.66 ACOSS recommended that, instead of pursuing automated decision-making in the area of debt recovery, the federal government:

- convene a roundtable of experts in social security, including people affected, to redesign a fair, accurate and humane system of debt recovery;
- cease outsourcing the administration of income support to private operators; and
- strengthen the capacity of Centrelink to meet need by increasing permanent staffing levels.⁶¹

Average Staffing Level cap

2.67 Some submitters suggested that the imposition of the government's public sector Average Staffing Level (ASL) cap was a driver for privatisation and outsourcing, and that the government should review and/or lift the cap.

2.68 The CSIRO Staff Association submitted evidence of an 'increased use of external contractors in CSIRO workplaces' as a result of the ASL cap. The Association recommended an investigation into the CSIRO's use of external contractors in its application of the ASL cap.⁶²

2.69 Disability sector advocates were especially concerned about the impacts of the ASL cap on the performance of the NDIS. People With Disabilities Western Australia submitted:

The staff cap imposed is clearly restricting the NDIA's ability to respond in a timely manner. This is again impacting on the level of service being

⁵⁹ Australian Human Rights Commission (AHRC), *Submission 1*, p. 8.

⁶⁰ AHRC, *Submission 1*, p. 3.

⁶¹ ACOSS, *Submission 2*, p. 1.

⁶² CSIRO Staff Association, *Submission 10*, [p. 1].

received by participants, and in some cases placing them at significant risk.⁶³

- 2.70 The Community and Public Sector Union, Tasmania (PSU Group) submitted that the number of permanent federal public service employees in Tasmania is dropping, with agencies choosing to use 'labour hire workers' instead. The PSU Group explained:

Despite a growing population, the number of federal public servants in Tasmania continues to decline. The most recent December 2018 figures from the APS show a decline since December 2013 of 477 jobs in Tasmania or 11%. There are now fewer APS employees in Tasmania than there were in 2007. This decrease has been brought about through redundancies and by agencies not replacing staff who resign.⁶⁴

- 2.71 The Department of Human Services acknowledged that one of three main drivers for utilising casual, non-ongoing and labour hire employees is 'the need to operate within the parameters of our budget and Government policies, including the Average Staffing Level (ASL) cap on APS staff'.⁶⁵

Committee view

- 2.72 The Australian government has a constitutionally-enshrined role and responsibility in delivering essential public services, as outlined in section 51 of the Constitution. These services must be delivered in a way that is fair, consistent, predictable and equitable for all citizens.
- 2.73 Delivering services efficiently and effectively in an era of advanced technology presents significant challenges. Citizens' expectations are higher than ever before, and governments must innovate to meet these expectations. Sometimes partnerships with the private sector can form a valuable component of this innovation. But privatisation is not a panacea, and outsourcing government services can cause more problems than it solves.
- 2.74 Evidence to this inquiry demonstrates that outsourcing government services is an activity fraught with risk. Projects inevitably cost more than originally planned, procurements fail after millions have been invested, service quality frequently suffers and rarely improves, and the profit-drive of private companies often leads to outcomes for citizens that exacerbate inequality, such as the imposition of higher or differential fees for service.
- 2.75 Privatisation of government service delivery impacts upon jobs and local economies, reducing the number of stable, secure full time jobs around the country. Staff working for private entities are often casual, on contracts, paid lower, and have worse conditions than permanent employees, which leads to

⁶³ People With Disabilities Western Australia, *Submission 33*, p. 6.

⁶⁴ CPSU, Tasmania (PSU Group), *Submission 11*, [p. 1].

⁶⁵ Department of Human Services, *Submission 24*, p. 2.

greater turn-over in staff and loss of expertise and morale. In addition, privatisation leads to a loss of capability in the public service, sometimes throwing away decades of knowledge and expertise.

- 2.76 Some government services are not suitable for outsourcing. In particular, services that deal with complex cases, sensitive information and data, highly-vulnerable citizens, or issues of national security may not be suitable for outsourcing. Experiences reported by participants in the NDIS highlight the problems that can occur when private companies administer critical government functions, guided not by the needs of citizens, but by their need to be profitable.
- 2.77 Evidence to the inquiry also highlighted economic impacts of privatisation that may not be immediately apparent, such as the loss of tax revenues as multinational contract holders avoid paying Australian tax on their profits.
- 2.78 The committee accepts that the government is ultimately responsible for delivering public services that are fair, equitable and accessible to all citizens. Partnerships with private entities can enhance the government's capacity to achieve these aims. However, privatisation frequently results in the inverse; leading to inadequate service provision that ultimately costs taxpayers more.
- 2.79 The committee believes the pendulum has swung too far towards privatisation, and the government would be well-placed to re-prioritise strengthening capacity, and encouraging innovation, *within* Australia's public sector.
- 2.80 The committee believes the Average Staffing Level (ASL) cap has led agencies to use more and more contract labour, ultimately costing the tax-payer more than the cost of equivalent in-house staff. The ASL cap has led to unintended economic outcomes, bolstering the private sector and labour hire companies without improving the budget bottom line. It is an inflexible and arbitrary imposition, and should be lifted.
- 2.81 The committee was also asked to look at automation, automated decision-making, and the robodebt scheme. The committee chose to not to conduct a detailed analysis of the scheme, as another committee was already doing so.
- 2.82 The committee appreciates that the practice of issuing debts based solely on automated 'income averaging' has now ceased. However, the government must ensure that citizens issued unfairly with debts under the scheme are appropriately compensated as soon as is practicable.

Recommendation 1

- 2.83 The committee recommends that the Australian government assess all current and future proposals for outsourcing government services against a 'public interest test', which includes flow-on economic and employment

impacts. Results of the public interest test, along with a comprehensive business case, must be made publicly available in a timely fashion.

Recommendation 2

- 2.84** The committee recommends that the Australian government provide a commitment that services dealing with complex cases and vulnerable people should not generally be considered suitable for outsourcing.

Recommendation 3

- 2.85** The committee recommends that the Australian government, in consultation with relevant stakeholders, implement arrangements to make outsourcing contracts publicly available, unless there are published national security concerns.

Recommendation 4

- 2.86** The committee recommends that the Commonwealth public service Average Staffing Level (ASL) cap be lifted immediately.

Recommendation 5

- 2.87** The committee recommends that the Australian government ensure any further projects that involve automated decision-making are not pursued if automation reduces service quality, impacts upon fairness, or reduces equity of access.

Recommendation 6

- 2.88** The committee recommends that Commonwealth departments and agencies have regard to the Commonwealth Ombudsman's guidance on best-practice in automation at the earliest stages of any relevant project.

Chapter 3

Outsourcing Australia's visa processing system

- 3.1 The committee was asked to consider the privatisation of Australia's visa and citizenship program, including:
- the integrity of Australia's visa and citizenship system,
 - the commercial implications and increased costs to industry, with particular regard for the tourism and higher education sectors,
 - the implications to national security, data security and privacy, and
 - the risk to public sector employment – especially rural and regional employment – through service delivery model changes.
- 3.2 This chapter addresses these terms of reference by considering whether visa processing is being outsourced, the appropriateness of outsourcing visa processing, impacts on various sectors, issues of security, privacy, service quality and access, and the tender process.

Is visa processing being outsourced?

- 3.3 The Department of Home Affairs released a market consultation paper in June 2017 which invited potential market providers to submit possible solutions for 'a new visa service delivery business, including new technologies to help design and build a global digital visa-processing platform'. Following the market consultation paper, the department released a Request for Expression of Interest on 22 September 2017 and progressed to co-design options. On 7 December 2018, the department released the *Request for Tender (RFT) Delivering Visa Services for Australia - Global Digital Platform* to a small number of respondents that had participated in the co-design phase.¹
- 3.4 A decision on the tender was due to be made in October 2019.² However, as of February 2020, no decision has been announced.
- 3.5 The department's website asserts that the project 'does not involve privatising Australia's visa system or decision making'.³ Over the course of the inquiry a number of witnesses disputed this assertion.

¹ Department of Home Affairs, 'Immigration reform: Transforming Australia's visa system', <https://immi.homeaffairs.gov.au/what-we-do/immigration-reform/about-the-reform> (accessed 11 February 2020).

² Department of Home Affairs, 'Immigration reform: Transforming Australia's visa system', <https://immi.homeaffairs.gov.au/what-we-do/immigration-reform/about-the-reform> (accessed 11 February 2020).

³ Department of Home Affairs, 'Immigration reform: Transforming Australia's visa system', <https://immi.homeaffairs.gov.au/what-we-do/immigration-reform/about-the-reform> (accessed 11 February 2020).

3.6 The CPSU said:

The government is proposing to privatise the core government function of visa processing. Their privatised global platform will be how 10 million people a year apply for an Australian visa—tourists, students, work and other categories of visa—and potentially apply for citizenship as well.⁴

3.7 Former Deputy Secretary of the Department of Immigration, Mr Abul Rizvi (private capacity) argued that, while ‘the department and the government remain in control in terms of the legal aspects through the Migration Act’, the project still represents privatisation. Mr Rizvi explained his view, saying:

What is being changed is that the ownership of the platform on which visas are processed will go from public hands to private hands. To me, that is privatisation, pure and simple.⁵

3.8 The department’s representatives argued that the ‘global digital platform’ project does not represent either outsourcing or privatising visa decision-making. Deputy Secretary of the Immigration and Settlement Services Group, Ms Malisa Golightly, said:

As is clear in the publicly available tender documents and in our submission, we are seeking a private sector partner to assist us to build a new platform, which is essentially a workflow tool, to assist in processing visa applications more efficiently and provide our clients with a seamless digital experience.... The department will maintain full responsibility and accountability for policy, security, risk assessment, and visa decision-making.⁶

3.9 According to the department, the private provider will not have any involvement in considering visa applications, and will not ‘undertake any visa decision-making’. The department will decide upon the ‘business rules’ implemented by the new platform, and:

It will determine which questions are asked of which applicants and the work flow process each application will follow. As set out in the tender documents and our submission, refusal decisions or decisions that take away a right or entitlement will only be made by departmental officials; they will not be made by the computer.⁷

3.10 The department also proposed that ‘safeguarding the integrity of the migration system as a whole...and providing advice on the economic and social benefits of migration will always be undertaken by departmental staff’.⁸

⁴ Ms Melissa Donnelly, National Secretary, Community and Public Sector Union (CPSU), *Committee Hansard*, 1 November 2019, p. 23.

⁵ Mr Rizvi, *Committee Hansard*, 1 November 2019, p. 10.

⁶ Ms Malisa Golightly, Deputy Secretary, Immigration and Settlement Services Group, Department of Home Affairs (Home Affairs), *Committee Hansard*, 1 November 2019, p. 47.

⁷ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 47.

⁸ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, pp. 47–48.

3.11 The CPSU questioned the department's assertion that it would retain total control over all decision-making, providing this example of a student visa:

At the end of the chain would possibly be a department officer but also possibly just an automation process where a technical administrative decision is made to grant the visa based on all of the work and the decisions of the privatised provider. When the department talks about retaining decision-making, what they're referring to is the technical administrative decision to grant the visa.⁹

3.12 Public Sector International (PSI) disputed the government's definition of privatisation, saying: 'as soon as the government doesn't run, own or control a service, it is privatised. There are many words that are used to hide what is, in effect, privatisation'.¹⁰

3.13 The Migration Institute of Australia (MIA) said it was not opposed to the idea of a public-private partnership, as long as the government retains control of immigration policy and process. However, MIA said information released about the project so far 'raises more questions than it answers'.¹¹

Appropriateness of outsourcing visa processing

3.14 Representatives from the department presented a number of reasons for the move to utilise a private provider to design and build a new visa processing system. Ms Golightly proposed that the global digital platform will benefit Australia by:

- delivering more accessible and convenient digital services, on any device and in a number of languages;
- allowing for matching skilled migrants to employment opportunities;
- helping facilitate identification of potential national security threats;
- improving the 'quality, consistency and efficiency' of departmental decisions; and
- removing inefficiencies, reduce manual processing and consolidate information required by decision-makers.¹²

3.15 The department pointed to increasing demand for visa services, which is forecast to grow to more than 13 million per year by 2028-29. This increase, it argued, is 'beyond the limits of the department's existing capability'.¹³

⁹ Mr Michael Tull, Assistant National Secretary, CPSU (PSU Group), *Committee Hansard*, 1 November 2019, p. 25.

¹⁰ Mr Michael Whaites, Oceania Sub-regional Secretary, Public Services International (PSI), *Committee Hansard*, 1 November 2019, p. 32.

¹¹ Mr John Hourigan, National President, Migration Institute of Australia (MIA), *Committee Hansard*, 1 November 2019, p. 29.

¹² Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 47.

¹³ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 47.

- 3.16 The department was asked which methods of procurement were considered as part of the business case. Ms Golightly confirmed that methods including ‘construct only; design and construct; design, construct and maintain; [and] manage and construct’ were all considered.¹⁴
- 3.17 The Australian Strategic Policy Institute (ASPI) expressed its support for the procurement method chosen, and argued the project was necessary to resolve the ongoing problem of inadequate resources and personnel. The ASPI submitted:
- The new visa reform framework is an innovative 21st century approach to the border security challenge. It engages with the latest thinking in both technology and private–public partnership. That said, continued public discourse and analysis of each phase remains critical to the development of an effective and efficient visa framework.¹⁵
- 3.18 A number of stakeholders in the migration sector were concerned that the integrity of Australia’s visa and citizenship system may be put at risk by outsourcing the visa platform. MIA stated that the government ‘has not consulted’ with it and other relevant stakeholders, ‘who have a wealth of knowledge on how a system should be designed to meet its objectives’. Further, MIA was concerned that the privatisation process has not been designed in a way that factors in ‘the complexity and operation’ of Australia’s migration law.¹⁶
- 3.19 The Centre for Policy Development (CPD) argued that visa processing is an area of government activity unsuited to outsourcing. CEO, Dr Travers McLeod cautioned that potential damage to Australia’s overseas reputation, and the inevitable loss of government processing capability, made outsourcing visa processing too risky.¹⁷
- 3.20 Mr Rizvi believed the department has yet to provide ‘an adequate response’ to the question of why privatisation is seen as a better option than an in-house system.¹⁸ Mr Rizvi argued that the department has not made a clear case for privatising the visa processing system, because:
- only simple visas will be automated and these are not where backlogs currently exist;
 - it is unclear how the privatisation would serve the public interest; and

¹⁴ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 55.

¹⁵ Australian Strategic Policy Institute, *Submission 29*, p. 4.

¹⁶ Mr Hourigan, MIA, *Committee Hansard*, 1 November 2019, p. 29.

¹⁷ Dr Travers McLeod, Chief Executive Officer, Centre for Policy Development, *Committee Hansard*, 1 November 2019, p. 2.

¹⁸ Mr Abul Rizvi, private capacity, *Committee Hansard*, 1 November 2019, p. 13.

- the department has not made clear how it intends to deal with risks.¹⁹
- 3.21 The CPSU suggested that the problems identified by the department in relation to visa processing caseloads could be resolved through 'increased public sector staffing and investing in the ICT platform', instead of outsourcing the system.²⁰
- 3.22 Along with other witnesses, Mr Rizvi highlighted risks associated with the fact that private providers are, by their nature, driven to make a profit. He asked:
- ...given the pressure on the private provider to provide strong returns to its shareholders, how will Home Affairs deal with relentless demands on it to allow the private provider to use the ICT platform to increase profits, but which are negative to the national interest? How can we be confident Home Affairs will be able to resist such pressure, especially as the opportunities requested by the private provider may proceed in small, incremental steps?²¹
- 3.23 MIA also expressed 'grave concerns' about 'commercialising' the visa processing system, identifying 'a tension between integrity and profit'.²²
- 3.24 Suggesting the current system 'works to the national interest', the CPSU said that public service employees manage decisions 'in a directly accountable manner'. National Secretary, Ms Melissa Donnelly, added:
- The work is undertaken by skilled APS employees of the Department of Home Affairs who have extensive experience in this field and a direct system of accountability through the department to the minister and government. Privatisation introduces a profit motive that puts at risk the integrity of this system. We have seen this with the privatisation of public services before.²³
- 3.25 Mr Rizvi pointed to past experiences of outsourcing projects, saying:
- There was a very major problem with IT system development in the department when we partnered with IBM in around, I think, 2008-09. That led to a major cost blowout and we did not get the kind of outcome that we were looking for.²⁴
- 3.26 MIA also suggested past experiences were indicative that visa processing is not suitable for outsourcing. MIA referred to the project to modernise the Australian Tax Office's IT system, and also highlighted the immigration

¹⁹ Mr Rizvi, *Committee Hansard*, 1 November 2019, p. 11.

²⁰ Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 28.

²¹ Mr Rizvi, *Committee Hansard*, 1 November 2019, p. 10.

²² Mr Hourigan, MIA, *Committee Hansard*, 1 November 2019, p. 29.

²³ Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 23.

²⁴ Mr Rizvi, private capacity, *Committee Hansard*, 1 November 2019, p. 11.

department's 'now abandoned attempt to modernise the visa immigration system'.²⁵

- 3.27 The Migration Council Australia was concerned that Australia's system of migration could be negatively affected by the privatisation of the processing system, impacting the economy and society. Ms Wilshire said:

Migration policy is really iterative, because it's a human system and it's regulating human behaviour. What affects somebody's choice to move can be so varied in terms of global forces in the economy—in the case of refugee movement, anything in terms of war, other pressures or push factors and pull factors—so you're regulating very complex human behaviour. It also has a significant impact in terms of Australia's economy. There's almost no sector of Australia's economy that isn't, in some way, reliant on the flow of skilled migration or the flow of people into Australia.²⁶

- 3.28 Also of concern, according to the Migration Council, is the 'iterative' nature of the migration system, and the fact that it deals with vulnerable people, and language barriers.²⁷

- 3.29 The CPSU cited economic concerns with outsourcing visa processing, such as were highlighted by the Australian Competition and Consumer Commission:

Australian Competition and Consumer Commission chairman Rod Sims [who] said that 'Selling public assets has created unregulated monopolies that hurt productivity and damage the economy.' Mr Sims cited the sale of ports and electricity infrastructure and the opening of vocational education to private companies as examples of these outcomes. CPSU submits that it would be appropriate for this Committee to inquire deeply into the likely impacts of a monopoly visa and citizenship provider.²⁸

Service quality

- 3.30 The Commonwealth Ombudsman reported on consumer complaints relating to visa processing, which show there were 397 complaints about the Department of Home Affairs in the period July to September 2019. This included 147 issues regarding temporary, bridging and protection visas, and 103 issues regarding citizenship and permanent visas. Common themes of complaints included 'dissatisfaction with decisions or administrative processes' and 'delays in processing times'.²⁹

²⁵ Mr Hourigan, MIA, *Committee Hansard*, 1 November 2019, p. 29.

²⁶ Ms Carla Wilshire, Chief Executive Officer, Migration Council Australia, *Committee Hansard*, 1 November 2019, p. 34.

²⁷ Ms Wilshire, Migration Council Australia, *Committee Hansard*, 1 November 2019, p. 36.

²⁸ CPSU, *Submission 32*, p. 14.

²⁹ Commonwealth Ombudsman, answers to questions on notice 1 November 2019 (received 25 November 2019), [p. 1].

- 3.31 The department was asked whether services provided through the new system will still come under the jurisdiction of the Commonwealth Ombudsman. Ms Golightly confirmed they would:

As well as that, the tender so far, and the subsequent contract, has very extensive controls, from information-gathering about things like the performance of the provider, the quality; the ability for us to quality-check our work and how the system is supporting that; the ability for others to review our work—for example, the Auditor-General or the Ombudsman.³⁰

- 3.32 The Ombudsman agreed. Deputy Ombudsman, Ms Jaala Hinchcliffe, said the Ombudsman had jurisdiction under the *Ombudsman Act 1976* and she was ‘not concerned’ about its ability to oversee contracted service providers in their delivery of public services.³¹

- 3.33 Ms Hinchcliffe also reiterated the Ombudsman’s view that the Commonwealth ‘can’t outsource the risk’, saying:

At the end of the day, coming from a position of dealing with complainants, complainants will not distinguish about whether a decision or process was delivered by an outsourced provider or by the department, so there is a reputational risk to the department as well that they cannot outsource.³²

Impacts on specific sectors

- 3.34 Stakeholders in the higher education sector expressed concerns about the outsourcing project. Universities Australia urged ‘care and caution’, saying: ‘We are genuinely concerned that it may have a bad impact on the ability of Australia’s universities to recruit students and staff from overseas’.³³
- 3.35 Universities Australia provided evidence around the high volume of visa applications from international students and their dependents (473,415 in the 2018-19 financial year), the significant contribution of the higher education sector to Australia’s economy, and the contribution of international student fees to universities’ total operating revenues (23.3 per cent for all universities and 27.5 per cent for ‘group of eight’ universities).³⁴

³⁰ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 50.

³¹ Ms Jaala Hinchcliffe, Deputy Ombudsman, Office of the Commonwealth Ombudsman (Commonwealth Ombudsman), *Committee Hansard*, 1 November 2019, p. 22.

³² Ms Hinchcliffe, Commonwealth Ombudsman, *Committee Hansard*, 1 November 2019, p. 21.

³³ Ms Catriona Jackson, Chief Executive, Universities Australia, *Committee Hansard*, 1 November 2019, p. 41.

³⁴ Universities Australia, answers to questions on notice 1 November 2019 (received 26 November 2019), [p. 1].

- 3.36 Chief Executive, Ms Catriona Jackson, told the committee that the current system is working for the sector because the department is able to be 'very responsive' to the sector in relation to issues it raises. Ms Jackson said:

I wouldn't pretend to say that it was perfect, but it is robust, it is transparent, it is clear and I think it is flexible enough to deal with—as you've already pointed out—some increases in fraudulent applications from particular places. We're not pretending it's perfect now, but we have genuine concerns that if it's privatised there may be less visibility and more problems.³⁵

- 3.37 The sector argued that in order to remain competitive in the global education market, 'Australia's student visa framework must maintain clarity, transparency and consistency'.³⁶ Universities Australia submitted that international 'experiments' in privatisation of visa processing had led to a '[n]egative experience for users and reputational risk for the sector'. As such, Universities Australia argued:

The best way to maintain integrity, efficiency and minimise cost and hardship to visa applicants is for Australian visa processing services to be retained within the immediate control of the Department of Home Affairs.³⁷

- 3.38 The Australian Hotels Association and Tourism Accommodation Australia submitted that any potential impacts on tourism and hospitality must be taken into account and minimised. Their combined submission highlighted potential threats to the integrity of the system, concerns around any possible price increases for visas, and concerns around flexibility and responsiveness.³⁸

Asylum seekers

- 3.39 The Refugee Advice and Casework Service argued that visas for people seeking asylum would never be appropriate for an outsourced system. Centre Director, Ms Sarah Dale, contended that 'decisions involving protection matters are more nuanced and the clients have significantly different needs, having fled torture, trauma and other associated violence'.³⁹ Ms Dale argued:

Decisions on protection visa applicants and material within those applications are quite literally matters of life and death. They are nuanced, complex and go beyond Australia's domestic interests, given the international implications and obligations under law.⁴⁰

³⁵ Ms Jackson, Universities Australia, *Committee Hansard*, 1 November 2019, p. 44.

³⁶ Universities Australia, *Submission 5*, p. 2.

³⁷ Universities Australia, *Submission 5*, p. 1.

³⁸ Australian Hotels Association and Tourism Accommodation Australia, *Submission 4*, p. 4.

³⁹ Ms Sarah Dale, Centre Director, Refugee Advice and Casework Service, *Committee Hansard*, 1 November 2019, p. 32.

⁴⁰ Ms Dale, Refugee Advice and Casework Service, *Committee Hansard*, 1 November 2019, p. 32.

3.40 Ms Dale said she lacked confidence in the government's assurances that applications for protection would not be included among the types of visas to be processed via the outsourced system. Ms Dale explained:

...most people now arriving and seeking asylum in Australia have arrived on a different visa—they've arrived as a student or they've arrived as a tourist, and then they've put in applications for protection. Therefore their data is going to be held by this system.⁴¹

3.41 The department provided on notice the list of visa types included in the original request for expression of interest. These were:

- Crew and Transit;
- Other temporary;
- Special Category (New Zealand);
- Student;
- Temporary Resident (Other);
- Temporary Resident (Skilled);
- Visitor; and
- Working Holiday Maker.⁴²

3.42 However, the CPSU submitted that the tender documents indicate the government 'will retain the option to extend the scope of the Platform to citizenship in the future, and the Department has made clear that it is their preference to do so'.⁴³

UK experience

3.43 A number of witnesses⁴⁴ pointed to recent experiences in the United Kingdom, where the visa processing system was outsourced to French tech company, Sopra Steria.⁴⁵ The CPSU said:

In the UK, visa privatisation has resulted in price-gouging of visa applicants, vulnerable applicants being exploited, and private providers using long delays in processing to drive interest in a quicker, premium, higher-priced product. The very existence of a stream where applicants who can pay more get better services runs deeply counter to the community's expectations of how public services should be delivered.⁴⁶

⁴¹ Ms Dale, Refugee Advice and Casework Service, *Committee Hansard*, 1 November 2019, p. 40.

⁴² Home Affairs, answers to questions on notice 1 November 2019 (received 6 December 2019), [p. 16].

⁴³ CPSU, *Submission 32*, p. 7.

⁴⁴ See for example: Universities Australia, *Submission 5*, pp. 3–4; Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 23.

⁴⁵ Anna Tims, 'Migrants forced to wait months for UK visa despite paying £800 for priority', 17 November 2019, *The Guardian*, <https://www.theguardian.com/money/2019/nov/17/migrants-home-office-super-priority-visa-service-problems> (accessed 11 February 2020).

⁴⁶ Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 23.

3.44 MIA observed that, as a result of the privatisation, service quality was reduced while costs to consumers were higher. Mr Hourigan claimed that visa applicants are required to pay 'premium prices' to progress phone or email inquiries in relation to their applications. MIA was concerned that:

It could be expected that the winning Australian consortium would impose similar fees for service. The winning consortium is expected to provide value-added services on a shared-value basis, but will this come at the expense of program integrity or border security?⁴⁷

3.45 PSI referred to research that found costs to consumers have increased 'between 14 and 72 per cent depending on the visa type, with optional services ranging from five to 1,000 pounds'. PSI contended that the 'optional services' represented 'a clear example of profit focus over quality control', as most of them were of no use to applicants. PSI's Mr Michael Whaites explained:

Sopra Steria has significantly decreased the number of free sites for internal visa applications to just six core sites across the UK. To book a session, you need to log on and apply, with each day released at 7 am on that day and filling quickly, coupled with repeated website failures. The alternative is for applicants to travel to another site and pay between 60 and 200 pounds for the appointment.⁴⁸

3.46 Representatives from Australia's university sector reported feedback from their UK counterparts that revealed 'several persistent issues', such as lengthy waiting times, problems of access, and fee-gouging behaviour for 'fast-track appointments'. Ms Jackson said: 'The ring-up support line charges are 2.50 pounds per minute. Some students are reported to have spent 100 to 200 pounds and still not received an appointment'.⁴⁹

3.47 Universities Australia was concerned that outsourcing may create a visa system 'which is not equitable'. Ms Jackson reported on a briefing Universities Australia received on the new visa system from the then Department of Immigration and Border Protection, which 'raised the prospect of differentiated services, including premium options that would assist in achieving financial outcomes for the government'.⁵⁰

3.48 PSI stated: 'The system in the UK is increasingly favouring those who can afford the added costs, diminishing the human rights of other applicants'.⁵¹

⁴⁷ Mr Hourigan, MIA, *Committee Hansard*, 1 November 2019, p. 30. See also: Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 23.

⁴⁸ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 30.

⁴⁹ Ms Jackson, Universities Australia, *Committee Hansard*, 1 November 2019, p. 42.

⁵⁰ Ms Jackson, Universities Australia, *Committee Hansard*, 1 November 2019, p. 42.

⁵¹ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 30.

The tender process

3.49 Concerns were raised in relation to the tender process, including by the CPSU, which highlighted the limited nature of the tender and raised ‘concerns about the adequacy of competition’. Ms Donnelly said:

The design of the procurement process is opaque, with the Commonwealth not tendering for a known tech solution but for a bidder to develop emerging technologies. Both bidders have extensive links to government, which raises issues about public perception and public confidence.⁵²

3.50 The department acknowledged that the current tender is a limited tender. However, it explained that the process started as a broad call-out to the market in 2017. The first request for expressions of interest attracted ‘roughly 16 respondees [sic]’. Then the department worked with respondents to refine its requirements and ‘short-listed down from there to the two that received the formal [Request for Tender]’.⁵³

3.51 The CPSU argued that this process had ‘locked out’ other providers, including a number of Australian small and medium enterprises (SMEs), who may have been able to provide solutions. The CPSU described the tender process as ‘opaque’ and said Australian SMEs ‘can’t find a way in’.⁵⁴

3.52 The two bidders in the final tender process are consortia. The first, Australia Visa Processing (known as AVP), is reportedly a conglomerate consisting of Ellerston Capital, PwC, Qantas Ventures, NAB, and Pacific Blue Capital. Some sources also list Oracle as a member of the AVP consortia.⁵⁵ The second is an Australia Post and Accenture consortium.⁵⁶

3.53 Mr Jason Ward, Principal Analyst for the Centre for International Corporate Tax Accountability and Research (CICTAR), suggested that companies involved in these consortia ‘have pretty atrocious records of tax avoidance, both in Australia and globally’.⁵⁷

⁵² Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 24.

⁵³ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 48.

⁵⁴ Mr Tull, CPSU, *Committee Hansard*, 1 November 2019, p. 24.

⁵⁵ Sarah Thompson and Anthony Macdonald, ‘PwC, Accenture groups submit visa processing bids, await political unbundling’, *Australian Financial Review*, 6 March 2019, <https://www.afr.com/street-talk/accenture-australia-post-lob-nofrills-bid-for-1b-visa-contract-20180718-h12tee> (accessed 12 February 2020).

⁵⁶ Julian Bajkowski, ‘Home Affairs \$1bn visa platform outsourcing riddled with IT risks’, 26 September 2019, *IT News*, <https://www.itnews.com.au/news/home-affairs-1bn-visa-platform-outsourcing-riddled-with-it-risks-531488> (accessed 12 February 2020).

⁵⁷ Mr Jason Ward, Principal Analyst, Centre for International Corporate Tax Accountability and Research (CICTAR), *Committee Hansard*, 1 November 2019, p. 6.

- 3.54 The committee asked CICTAR to provide a detailed analysis of companies involved in consortia, specifically Oracle and Accenture.⁵⁸ CICTAR provided this analysis, as requested:

Globally, Oracle reported operating margins of 34% each year from 2016-2018 compared to Australian margins averaging 2.5% over 4 years (2013/14-2016/17). Globally, Accenture reporting operating margins of 14.8% and 13.3% in 2018 and 2017 compared to Australian margins averaging 8.1% over 4 years. While Accenture's Australian margins are significantly higher, they have declined every year and were 4.9% in 2016/17. These significant and consistent gaps are a strong indication of profit shifting to reduce taxable income in Australia.

By total income (2016/17) in Australia, Oracle (\$1.229 billion) ranked 271st and Accenture (\$1.825 billion) ranked 176th in the ATO tax data for all large companies. In 2018, massive related party transactions of at least \$773 million for Oracle and \$1,061 million for Accenture may have facilitated the shifting of profits from Australia to tax havens.

Both companies are under audit by global tax authorities and have reached major settlements for transfer pricing. Oracle is currently disputing an additional assessment of over \$300 million with the ATO. This transfer pricing dispute appears to be one of the ATO's largest cases and may represent shifting of over \$1 billion in profits out of Australia.⁵⁹

- 3.55 CICTAR's contention was that '[n]o further federal contracts should be awarded to companies like Oracle and Accenture until they agree to stop using aggressive tax avoidance (transfer pricing) schemes and agree to increase transparency of Australian and global operations'.⁶⁰

- 3.56 The department stated that companies in the tender process have to meet strict criteria regarding their payment of tax. First Assistant Secretary, Mr Andrew Kefford reported:

There are provisions in the tender documents we publish which do seek additional information from the tenderers in relation to their tax compliance as well as the subsidiary or related parties...The tender requires a series of statements to be made in terms of the tenderer's tax behaviour and tax record going to compliance audit investigations...What the tender says is that we expect the providers to have an exemplary tax record with the ATO.⁶¹

- 3.57 In response to a question on notice, the department also confirmed the following requirements tenderers must meet:

⁵⁸ Mr Ward, CICTAR, *Committee Hansard*, 1 November 2019, p. 3.

⁵⁹ CICTAR, answers to questions on notice 1 November 2019 (received 25 November 2019), p. 2.

⁶⁰ CICTAR, answers to questions on notice 1 November 2019 (received 25 November 2019), p. 2.

⁶¹ Mr Andrew Kefford, First Assistant Secretary, Visa Delivery Transformation Division, Home Affairs, *Committee Hansard*, 1 November 2019, p. 53.

- has complied with all obligations imposed on the Operator Group by any Tax Law;
- has not in the last 5 years been the subject of any audit by, or in dispute with, any Tax Authority;
- any contractors engaged by the Operator Group are not employees of the Operator Group for the purposes of any Law;
- is not involved in any audit or investigation of any of its Tax returns or business operations or any dispute with any Tax Authority and the Operator Group is not aware of any circumstances or event which may give rise to any such audit, investigation or dispute;
- has not entered into or been a party to any transaction which contravenes the anti-avoidance provisions, transfer pricing provisions or diverted profits tax provisions of any Tax Law;
- is not currently the beneficiary of any extension of time within which to file, lodge or submit any Tax return or with respect to any Tax assessment or any Tax shortfall; and
- has not in the last 5 years been the subject of any audit by, or in dispute with, any Tax Authority.⁶²

Risk, data and security

3.58 A key focus of evidence to the inquiry was around risks associated with outsourcing the visa processing system, including procurement risk, economic risk, data security and threats to national security.

Procurement risk

3.59 Mr Rizvi raised questions about the arrangements the department has in place to respond to possible problems with the procurement, such as: the private provider underestimating the cost of developing ‘such a complex ICT platform’; or the private provider choosing ‘a cheap form of rebuild’, which has to be re-done. Mr Rizvi added: ‘Is the department prepared to bail out the private provider with additional funds or allow more time for a proper build?’⁶³

3.60 PSI raised market risks, such as the risk that the companies involved may ‘fold, merge and sell’. It referred to a New South Wales example, where a hospital was privatised to a company that had been vetted and approved, ‘but that company very quickly sold on to a third entity’.⁶⁴

3.61 It was Mr Rizvi’s view that the ‘capability’ in the system should be ‘duplicated’ within the department. Without this duplication, Mr Rivzi suggested it would

⁶² Home Affairs, answers to questions on notice 1 November 2019 (received 6 December 2019), [pp. 5–6].

⁶³ Mr Rizvi, private capacity, *Committee Hansard*, 1 November 2019, p. 10.

⁶⁴ Mr Whaites, PSI, *Committee Hansard*, 1 November 2019, p. 31.

not be possible for the Commonwealth to terminate the contract if things went wrong. Mr Rizvi said:

I can't see, without a backup system, how it could terminate the contract. It's like saying, 'Turn off the visa system for a few years'—it's just implausible.

CHAIR: That raises the issue, does it not, about what the actual real cost is?

Mr Rizvi: Absolutely. The real cost in this, I believe, is ultimately a loss of control in the visa system.⁶⁵

- 3.62 The department argued that procurement risk has been mitigated by ensuring that the process is 'business led', rather than product-led.⁶⁶ MIA, however, was concerned about 'a distinct lack of oversight' regarding the future operations of the consortium, and asked:

What will prevent the consortium from outsourcing the program to a third party in a lower cost jurisdiction where information may not be safely protected? What will prevent the misuse of the data for commercial or nefarious means?⁶⁷

Data security

- 3.63 Submitters were also concerned about privacy and data security.⁶⁸

- 3.64 CICTAR suggested that, in a privatised model there are no guarantees 'records won't be processed by a company using workers overseas'. Mr Ward questioned how the government could control access to visa applicant information held by private companies, and reflected upon the lack of transparency in relation to the contracts for the new system.⁶⁹

- 3.65 The CPSU argued that there are a number of examples of outsourcing projects that were covered by 'very comprehensive contracts...assurances and security mechanisms', which 'still resulted in major and damaging data breaches'.⁷⁰

- 3.66 The Migration Council raised a further issue around 'the predictive capacity of the metadata' held within Australia's visa processing system. The Council felt that this metadata could have 'a huge commercial value', placing it at risk if not in government hands.⁷¹

⁶⁵ Mr Rizvi, private capacity, *Committee Hansard*, 1 November 2019, p. 12.

⁶⁶ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 49.

⁶⁷ Mr Hourigan, MIA, *Committee Hansard*, 1 November 2019, p. 29.

⁶⁸ See for example: Universities Australia, *Submission 5*, p. 3.

⁶⁹ Mr Ward, CICTAR, *Committee Hansard*, 1 November 2019, p. 4.

⁷⁰ Mr Tull, CPSU, *Committee Hansard*, 1 November 2019, p. 27.

⁷¹ Ms Wilshire, Migration Council Australia, *Committee Hansard*, 1 November 2019, p. 38.

- 3.67 The department sought to assuage concerns, saying the successful tenderer will have to store all data onshore in Australia and meet Australia's security, privacy and confidentiality laws.⁷² Under the model proposed, the department would retain 'full access to the system', and the data would remain in the control and ownership of the Commonwealth.⁷³

Access to information for applicants

- 3.68 Visa applicants frequently request access to their own information from the department, especially applicants who have changed from one migration agent to another and may not have their documents. MIA was concerned that the consortium would not be subject to the freedom of information (FOI) regime, and 'would charge a fee for access'.⁷⁴
- 3.69 The Refugee Advice and Casework Service echoed these concerns and added that the FOI unit in the department is already struggling to meet the demand for access to documents and information, and that it fears even greater delays and expense for applicants if a private contractor was part of the process.⁷⁵

Job losses

- 3.70 The CPSU estimated 'at least 2,000 direct public sector jobs could be lost' as a result of the outsourcing process.⁷⁶ The department disputed this suggestion.⁷⁷
- 3.71 Deputy National President of the CPSU, Ms Lisa Newman, said:
- The reality is our members and delegates and the department estimate that could be between 2,300 jobs and 3,000 jobs lost over time as the tranches of the government's proposal to privatise...Over the next four to five years.⁷⁸
- 3.72 The CPSU said its estimates were drawn from analysis of the numbers of staff currently involved in processing visa applications, and associated activities. Ms Newman said this included 250 staff in Queensland, 800 in New South Wales, 500 in the ACT, 600 in Victoria, 100 in Hobart and Tasmania, 250 in Adelaide and 250 in Perth.⁷⁹
- 3.73 The CPSU argued that these staff may not be able to be redeployed, as there are no pathways for moving to 'more complex and highly classified jobs'.

⁷² Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 49.

⁷³ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 50.

⁷⁴ Mr Hourigan, MIA, *Committee Hansard*, 1 November 2019, p. 33.

⁷⁵ Ms Dale, Refugee Advice and Casework Service, *Committee Hansard*, 1 November 2019, p. 36.

⁷⁶ Ms Donnelly, CPSU, *Committee Hansard*, 1 November 2019, p. 23.

⁷⁷ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 50.

⁷⁸ Ms Lisa Newman, Deputy National President, CPSU (PSU Group), *Committee Hansard*, 1 November 2019, p. 26.

⁷⁹ Ms Newman, CPSU, *Committee Hansard*, 1 November 2019, p. 26.

Ms Newman said union delegates could find ‘no evidence...of any transitional arrangements’, and that it would be difficult to transfer people engaged in APS3 and 4 work to more complicated APS5 and 6 roles.⁸⁰

3.74 SA Unions highlighted the effect such a reduction in staffing would have on that state, saying: ‘The proposal to privatise Australia's visa processing system puts in excess of another 200 jobs at risk in South Australia.’⁸¹

3.75 The CPSU in Tasmania said the privatisation of visa processing would have a ‘disproportionate impact on Tasmania’, because:

There are currently 136 staff working in the Department of Home Affairs in Tasmania and the CPSU understands that 90 percent of these staff work in visa assessments. Temporary work visas and tourist visa assessments, under scope for privatisation, are all actioned in Tasmania. The high amount of staff working in visa assessment, places those jobs at risk if the visa processing system is privatised. The visa categories first in scope for privatisation are processed in Tasmania.⁸²

3.76 Ms Newman also said that the department’s budget papers ‘indicate an 8.5 per cent decrease in salary entitlements in the forward estimates’.⁸³

3.77 This point was also picked up by MIA, which stated that budget papers indicate about ‘2,500 jobs [would] go as part of the privatisation model’. MIA’s Ms Bronwyn Markey directed the committee to the Department of Home Affairs *Portfolio Budget Statement 2019-20*, saying the section on forward estimates shows a 150 million reduction in staffing costs that remains low ‘until at least 2022-23’.⁸⁴

3.78 MIA further argued that the loss of visa processing staff was about more than just job losses. Mr Hourigan said:

In winding down the operations of the department, its DNA, long-term deep expertise and core understanding of the migration system will be lost and will be difficult to rebuild if this proposed privatisation system fails.⁸⁵

3.79 The department, however, disputed MIS’s interpretation of the figures. Ms Golightly said:

My understanding is that that figure has been confused. Indeed, the employee benefits budget from last year to this year has increased, as has the average staffing level. Perhaps what that figure might be referring to is

⁸⁰ Ms Newman, CPSU, *Committee Hansard*, 1 November 2019, p. 25.

⁸¹ SA Unions, *Submission 7*, p. 2.

⁸² CPSU Tasmania (PSU Group), *Submission 11*, [p. 3].

⁸³ Ms Newman, CPSU, *Committee Hansard*, 1 November 2019, p. 25.

⁸⁴ Ms Bronwyn Markey, Professional Support Manager, MIA, *Committee Hansard*, 1 November 2019, p. 35.

⁸⁵ Mr Hourigan, MIA, *Committee Hansard*, 1 November 2019, p. 30.

the normal thing that happens over the forward estimates where various budget measures lapse and various estimates variations are made. But there is nothing in the forward estimates relating to the new platform because we are still doing the evaluation. I think it may well have been a mix-up in the figures, but it's certainly incorrect to say that there's a decrease of \$150 million this year in the [global digital platform].⁸⁶

3.80 Asked to explain further, Ms Golightly added: 'I need to be very clear that it's incorrect that a \$150 million decrease in the employee budget is anything to do with the global digital platform'.⁸⁷

3.81 The department was asked to provide on notice a breakdown explaining the apparent reduction in employee-related expenses over the forward estimates.⁸⁸ The department provided its response in December 2019, which stated:

Expense estimates for measures and variations are notionally allocated between supplier and employee expenses in the forward years based on costing agreements and historical splits.

As we approach each budget year, decisions are formalised as to how the budget will be allocated internally between employee and supplier expenditure. These estimates are subsequently updated.

Additionally, the forward estimates will be further updated based on the decisions taken by the Government in future budget rounds.

...

The key contributors to the overall reduction in total expenses include savings over a number of budgets from the 2014-15 PBS through to the 2019-20 PBS, in the following areas – Customs Reform, Smaller Government – consolidation of Australia's border protection services, Better Targeting Skilled Visas, Reforming the Visa and Migration Framework, Resolving the Onshore Illegal Maritime Arrival Legacy Caseload, Establishment of Home Affairs Portfolio Efficiencies, Operation Sovereign Borders and a number of Estimates Variations.⁸⁹

Transparency

3.82 Stakeholders were critical of the government's approach to the tender, saying there was not enough transparency around how decisions were being made.

3.83 The CPSU suggested the public had a right to know more about the project, and argued that the business case should be made public.⁹⁰ Ms Golightly

⁸⁶ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 50.

⁸⁷ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 51.

⁸⁸ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 51.

⁸⁹ Home Affairs, answers to questions on notice 1 November 2019 (received 6 December 2019), [p. 3].

⁹⁰ Mr Tull, CPSU, *Committee Hansard*, 1 November 2019, p. 24.

confirmed that a business case was prepared for the project, but is 'part of the cabinet considerations', and as such is not publicly available.⁹¹

3.84 Asked about the costs of the project, Ms Golightly reported that the department could not provide an estimate at this stage, 'because we haven't tested the market yet'. However, Ms Golightly did confirm the department's view that the 'scale of this project...is in the order of \$1 billion to \$2 billion' for the first 'bundle'.⁹²

3.85 The department noted that the Prime Minister and immigration minister have recused themselves from the tender process due to possible conflicts of interest.⁹³

Progress of the tender

3.86 As at February 2020, no decision has been announced in relation to the tender.

3.87 Media reports suggest that the department believes legislation would be required in order to outsource the visa processing system. This information is drawn from briefing documents prepared for the government by the department shortly after the May 2019 election.⁹⁴

3.88 Shadow Minister Assisting for Immigration and Citizenship, Mr Andrew Giles MP, in a media release on 29 January 2020, stated:

The Morrison Government has hit a roadblock in its plan to privatise Australia's visa system.

The Department of Home Affairs' own advice is that this privatisation requires legislative change.

The Senate has voted time and time again against selling off our visa system. Labor along with the crossbench strongly opposes the privatisation of Australia's visa system.

It is highly unlikely the Government will have the support of the Senate meaning visa privatisation is set to be doomed.⁹⁵

3.89 Neither the Minister for Home Affairs, nor the department, has made any recent announcement in relation to the progress of the tender.

⁹¹ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 51. See also: Home Affairs, answers to questions on notice 1 November 2019 (received 6 December 2019), [p. 5].

⁹² Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 52.

⁹³ Ms Golightly, Home Affairs, *Committee Hansard*, 1 November 2019, p. 54.

⁹⁴ Tom Stayner, 'Visa outsourcing plan faces uncertain future after Home Affairs advice revealed', 29 January 2020, *SBS News*, <https://www.sbs.com.au/news/visa-outsourcing-plan-faces-uncertain-future-after-home-affairs-advice-revealed> (accessed 13 February 2020).

⁹⁵ Mr Andrew Giles MP, 'Media release: Visa Privatisation Doomed', 29 January 2020, <https://www.andrewgiles.com.au/media-centre/media-releases/visa-privatisation-doomed> (accessed 13 February 2020).

Committee view

- 3.90 The committee rejects the assertion that tendering for a private partner to host the global digital visa-processing platform is not privatisation. The global digital platform project would see a private entity design, build and administer the system that processes the vast majority of Australia's visa applications. As such, the project would see the Department of Home Affairs hand over control of large amounts of sensitive and critical data to a profit-making conglomerate.
- 3.91 International experience, particularly in the UK, has shown that the consequences of such outsourcing can be dramatic. Profit-making entities are driven to find ways to maximise their profits, and this inevitably leads to reduced service quality and/or higher fees. The UK project has resulted in both.
- 3.92 The committee takes seriously concerns raised by the education, hospitality and tourism sectors that a reduction in the quality, timeliness, and affordability of visa services could severely impact their businesses.
- 3.93 Stakeholders have been understandably frustrated that the tender process has been so opaque, with no business case released, and no explanation offered for why the department cannot invest in an in-house solution.
- 3.94 The committee acknowledges that there is ambiguity around precisely how many permanent APS jobs may be lost as a result of any privatisation. However, the committee does not accept the department's assertion that the project will not impact jobs. Regional communities in particular are likely to be affected disproportionately if the project goes ahead.
- 3.95 Outsourcing Australia's visa processing system is a project fraught with risks, and the committee is not satisfied that these risks have been sufficiently addressed. The committee has concerns around procurement risk, data security, and equitable access to data and information for potentially vulnerable cohorts. The committee is also concerned about the lack of transparency around the tender process.
- 3.96 For these reasons, and the fact that any decision to outsource would be extremely difficult to reverse, the committee cannot support the project. The committee suggests the department fund and further explore options for developing an in-house solution that does not require the government to ostensibly 'hand over' control of the processing functionality and data management to private entities.

Recommendation 7

3.97 The committee recommends that the Australian government does not proceed with the *Request for Tender (RFT) Delivering Visa Services for Australia - Global Digital Platform*, and seeks instead to fund and deliver an in-house solution.

**Senator the Hon Kim Carr
Chair**

Coalition Senators' dissenting report

- 1.1 Coalition senators do not support the recommendations of the majority committee report.
- 1.2 It is clear the intention behind this inquiry has been to engage in political grandstanding against the current Government and its policies which will improve service delivery and processes for all Australians.
- 1.3 The Government has already taken action to strengthen the Income Compliance program.
- 1.4 Australian taxpayers foot the bill for around \$111 billion in social security payments each year and rightly expect that those engaged in the system are able to receive the amount of support for which they are eligible – nothing more, nothing less.
- 1.5 The Government has a responsibility to collect any overpayments. Compliance activity will continue for past and future welfare payment recipients where there is a reason to believe they have been overpaid.
- 1.6 This is central to the community having trust in the administration of this safety net and the Government's obligation to meet the expectation that overpayments will be returned to taxpayers.
- 1.7 Coalition senators do not accept the recommendation that the Commonwealth public service Average Staffing Level (ASL) cap be lifted.
- 1.8 Where a portfolio seeks additional resources, the Government considers those proposals on their unique merits to assess whether ASL is the most appropriate way to tap human talent. In making decisions on staffing proposals, the Government can take into account factors such as non-tax revenue opportunities, for instance from commercial ventures.
- 1.9 Arguments to allow unconstrained public sector staffing are often based on an incorrect misconception there is a single Commonwealth control on staffing, namely agency staffing caps. Critics of staffing controls fail to recognise that ASL management also involve ASL offset requirements for bringing forward New Policy Proposals. The ASL offset rule has huge value as it forces agencies to identify opportunities to reprioritise staff time before seeking costly new resources. This rule also has the benefit of forcing agencies to regularly hone their strategic focus.
- 1.10 The so called 'caps' are neither arbitrary, nor fixed. They adjust each year based on decisions about what offsets are available and reasonable to use. They adjust based on new work and new staffing given to agencies, when approved by Cabinet. Agency staff levels are therefore the product of

individual decisions by the Government over time on successive policy proposals.

- 1.11 This approach to setting ASL ensures that each agency has as much staff as they need for their responsibilities, but no more than necessary.
- 1.12 The Government has always promoted a flexible approach to resourcing that strikes the right balance between a talented, core workforce of permanent public servants and selective use of external expertise. The Government has consistently said that training, recruitment and procurement will all be used, where appropriate, to enhance skill sets of the permanent public service and ways of working.
- 1.13 In specific circumstances, it is legitimate that the Government requires access to specialist skills and temporary resources for particular projects, which requires it to look outside the ranks of the public service.
- 1.14 A contractor or consultant can bring specialist skills that could not be expected to be held in-house, for instance where sophisticated IT projects require someone who has skills developing innovative products for a range of clients. Banks and other businesses have often been ahead of the Government in IT, not because of their internal IT capabilities, but because of their willingness to test the market.
- 1.15 The Government also recognises the value of partnerships with the private sector. When public servants and external specialists work together on projects, there is a two-way transfer of skills and experience, and a greater opportunity for diversity of views.
- 1.16 Coalition senators do not accept the contention that the Request for Tender (RFT) Delivering Visa Services for Australia – Global Digital Platform is a form of visa decision making privatisation.
- 1.17 The Department of Home Affairs is conducting a tender process for a new workflow tool that will support digital visa application and decision making.
- 1.18 This modernisation process is necessary to reduce processing times and to ensure visa decision making continues to support key export industries like tourism and education, and helps keep us all safe.
- 1.19 The Australian Government will always remain responsible and accountable, as it is today, for all visa decision making. It will determine visa rules and how decisions are made.
- 1.20 The Government will remain responsible for national security and community protection by maintaining control of visa decision making.
- 1.21 The provider of the workflow tool will have no role whatsoever in visa decision making.

- 1.22 This reform will allow the Department's skilled and experienced officers to re-focus their effort on higher value, more complex decision making. This will enhance border integrity.
- 1.23 This process is not being driven by a desire to reduce departmental staffing or cut costs. Claims that this process will lead to wholesale job losses and office closures are simply false and those making those claims know that.
- 1.24 In conclusion, Coalition senators reject the findings of the majority report, and support Government initiatives such as the Income Compliance Program and the Global Digital Platform.

Senator Amanda Stoker
Deputy Chair

Appendix 1

Submissions, tabled documents, answers to questions on notice

Submissions

- 1 Australian Human Rights Commission
- 2 Australian Council of Social Services
- 3 Centre for Comparative Constitutional Studies
- 4 Tourism Accommodation Australia
- 5 Universities Australia
- 6 Victoria Legal Aid
- 7 SA Unions
- 8 Commonwealth Ombudsman
- 9 Australian Small Business and Family Enterprise Ombudsman
- 10 CSIRO Staff Association
- 11 Community and Public Sector Union, Tasmania (PSU Group)
- 12 Queensland Advocacy Incorporated
- 13 Refugee Advice and Casework Service
- 14 Australian Council of Trade Unions
- 15 Uniting Communities Inc
- 16 Dr Darren O'Donovan
- 17 Mr Abul Rizvi
- 18 Dr Paul Barnes
- 19 Uniting Church of Australia
- 20 Per Capita
- 21 Migration Institute of Australia
- 22 Emeritus Professor Terry Carney AO
- 23 Migration Council of Australia
- 24 Department of Human Services
- 25 Department of Defence
- 26 Public Services International
 - Attachment 1
- 27 Centre for International Corporate Tax Accountability & Research (CICTAR)
 - Attachment 1
- 28 Department of Home Affairs
- 29 Dr John Coyne, Austalian Strategic Policy Institute
- 30 Mr John Carter
- 31 National Council of Single Mothers and their Children
- 32 Community and Public Sector Union (CPSU)
- 33 People With Disabilities (WA) Inc

- 34 People with Disability Australia
- 35 Anglicare Australia
 - Attachment 1
- 36 Liberty Victoria
- 37 National Social Security Rights Network
- 38 Assyrian Resource Centre - Assyrian Australian Association
- 39 Homelessness NSW
- 40 Community and Public Sector Union, South Australia (CPSU - SA)
- 41 *Name Withheld*
- 42 *Confidential*
- 44 Proud to be Public

Answers to Questions on Notice

- 1 CICTAR - Answers to questions on notice 1 November 2019 (received 25 November 2019)
- 2 Commonwealth Ombudsman - Answers to questions on notice 1 November 2019 (received 25 November 2019)
- 3 Universities Australia - Answers to questions on notice 1 November 2019 (received 26 November 2019)
- 4 Department of Home Affairs - Answers to questions on notice 1 November 2019 (received 6 December 2019)

Correspondence

- 1 Migration Institute of Australia - correction to evidence provided on 1 November 2019 (received 26 November 2019)
- 2 Commonwealth Ombudsman - correction to evidence provided on 1 November 2019 (received 27 November 2019)

Appendix 2

Hearings

Friday, 1 November 2019

Committee room 2S3

Parliament House

Canberra

Centre for Comparative Constitutional Studies

- Dr Kristen Rundle, Co-Director

Centre for International Corporate Tax Accountability & Research

- Mr Jason Ward, Principal Analyst

Centre for Policy Development

- Dr Travers McLeod, Chief Executive Officer

Mr Abul Rizvi, Private capacity

Commonwealth Ombudsman

- Mrs Jaala Hinchcliffe, Deputy Commonwealth Ombudsman
- Mr Paul Pfitzner, Senior Assistant Ombudsman, Complaints Management and Education Branch
- Mrs Fiona Sawyers, Senior Assistant Ombudsman, Strategy Branch

Community and Public Sector Union

- Ms Melissa Donnelly, National Secretary
- Mr Michael Tull, Assistant National Secretary
- Ms Lisa Newman, Deputy National President
- Mr Sam Oram, Member

Public Services International

- Mr Michael Whaites, Oceania Sub-regional Secretary

Refugee Advice and Casework Service

- Ms Sarah Dale, Centre Director & Principal Solicitor

Migration Institute of Australia

- Mr John Hourigan FMIA, National President
- Ms Bronwyn Markey, Professional Support Manager

Migration Council of Australia

- Ms Carla Wilshire, Chief Executive Officer

Universities Australia

- Ms Catriona Jackson, Chief Executive Officer
- Dr John Wellard, Policy Director International

Department of Home Affairs

- Ms Malisa Golightly, Deputy Secretary, Immigration and Settlement Services Group
- Mr Andrew Kefford, First Assistant Secretary, Visa Delivery Transformation Division