



Joint Submission by the ASU & FSU

to the

Senate Finance and Public Administration Committees

Inquiry into Commonwealth procurement procedures

Submitters: Linda White, ASU Assistant National Secretary
Leon Carter, FSU National Secretary

Organisations: Australian Services Union
Finance Sector Union

Email: lwhite@asu.asn.au
leon.carter@fsunion.org.au

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Introduction

Australian Services Union

The Australian Services Union [ASU] is one of Australia's largest Unions, representing approximately 120,000 employees.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Today, the ASU's members work in a wide variety of industries and occupations and especially in the following industries and occupations:

- Local government (both blue and white collar employment)
- Social and community services
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and SA)

The ASU has members in every State and Territory of Australia, as well as in most regional centres.

Finance Sector Union

The Finance Sector Union represents workers in finance, services to finance, insurance and superannuation.

The FSU was founded in July 1991 when the two main players in the banking and insurance industries - the Australian Bank Employees' Union (ABEU) and the Australian Insurance Employee's Union (AIEU) voted to amalgamate and create the FSU.

The Finance Sector Union exists to promote, improve and protect the working conditions and entitlements of its members. Offshoring continues to play a major role in the lives of many of our members and the FSU is increasingly concerned with the impacts of massive service sector job losses on Australian workers and their communities.

The ASU & FSU welcome the opportunity to participate in the Inquiry into Commonwealth procurement procedures. Government procurement presents an opportunity and direct policy lever with which the government can influence the employment practices of call centres, ICT contractors and other suppliers in the services industry. The Australian Government should use their significant purchasing power to ensure those contracted to supply services to the Australian Government employ Australian labour and keep their operations onshore.

The ASU has members in both in house call centres and call centres companies which perform “contract” call centre functions for other companies. The ASU also has members in private sector – clerical and administrative work in a variety of companies including private legal firms as well as IT professionals in companies like Qantas and IBM.

The FSU has members in every state and territory. Our established membership base reflects the needs of Australia’s diverse banking, insurance and finance industries and as such, members are located right around the country in small rural communities and larger metropolises.

Together the ASU and FSU have created the joint campaign “Secure Jobs Secure Data” which focusses on the crisis facing professional services workers whose jobs are being offshored at an alarming rate. The campaign is also concerned about the offshoring of Australian’s sensitive personal data which follows the jobs going offshore, and how this affects our privacy and security.

Australian Government procurement

The federal government expends billions of dollars every year on the acquisition of goods and services¹. The ASU believes the Commonwealth needs to be mindful of, and committed to, the need to ensure that their expenditure of taxpayers’ money encourages the creation and retention of good jobs within Australia.

Government procurement is a direct policy lever with which the government can influence the practices of service providers. The procurement policy should include a requirement that overseas suppliers or sub-contractors comply with the same standards as domestic suppliers. Overseas suppliers are only required to comply with the laws of the countries within which they are operating. In many cases these laws are significantly lower than the Australian standard. The NSW code of practice for procurement holds suppliers accountable and responsible for the activities of their supply chain, this is a good model that the Australian government should consider.

In July 2009 the Australian Labor Government made a strong statement about the use of contractors and subcontractors and committed to improve its procurement practices². The statement acknowledged that contracting is ‘sometimes used as a vehicle to undermine the entitlements of employees’³. The government committed to only contract out its functions when it is in the public interest to do so. The government also committed to a range of initiatives to monitor the sub- contracting arrangements of its suppliers.

From this statement emerged the *Fair Work principles* released in July 2009 which detailed the Australian Government’s expectations of its procurers and suppliers⁴. The principles prescribe that suppliers must comply with Australian workplace laws and ethical standards and warn that contractors who breach these standards will be unable to secure future government contracts. The principles also require those contracted suppliers, as far as practicable, place the same legal and ethical obligations on their subcontractors and are transparent about where and to whom they sub contract work.

The statement and principles are certainly an improvement on the procurement practices of the Howard Government. However there is more that could be done to ensure that Australian Government suppliers employ Australian labour and maintain or restore their operations on shore. The principles notably do not require that overseas suppliers or sub-contractors comply with the same standards as domestic suppliers. Overseas suppliers must merely comply with the domestic laws of the country in which they are operating. This enables offshoring and can encourage a regulatory race to the bottom. The race to the bottom occurs where countries compete for offshoring work by offering companies a lax regulatory environment and poor labour standards to conduct their business (or engage a subcontractor). It gives Australian suppliers a free pass to engage unscrupulous suppliers overseas, and fails to hold suppliers responsible and accountable for labour practices in their supply chain.

The revised *Commonwealth Procurement Rules*, which became effective from 1 July 2012, contain no significant policy changes from their 2009 counterpart. However, these rules are now supplemented by the *Fair Work Principles*, which came into effect on 1 January 2010, and which set out ongoing requirements on government contractors aimed at ensuring that they comply with the *Fair Work Act* as well as with relevant industrial instruments and employment-related laws including those relating to occupational health and safety, workers' compensation, superannuation, anti-discrimination and taxation.

The NSW Code of Practice for Procurement has much stronger language to address this issue⁵. The Code defines "best practice" for government procurers as continuous improvement and performance in ethical business practices, workplace practices, and supply chain management. It critically holds government suppliers responsible for the activities of their subcontractors. 'A service provider who contracts with the client agency is accountable to the client agency for the standards of performance, behaviour and ethical conduct of all service providers down the contract chain'⁶.

Many Commonwealth government departments engage suppliers to deliver call centre services, information technology or clerical and administrative work. It seems reasonable that work should be delivered onshore providing Australian's with employment and stimulating the local economy. Government procurement presents another opportunity and policy lever for the government to strengthen the domestic services industry and prevent more offshoring.

Evidence suggests that that the ongoing failure to adequately address the competitiveness of Australia's services industries is jeopardising the countries move towards a knowledge-based economy, and undermining investments made into training services and education⁷. Estimates that 24% of Australia's financing sector is at risk of off-shoring is testament to this⁸. Australia's economic model requires the support of reliable, domestic experts in the services sector to ensure the provision of services for a range of industries. The permanent loss of such jobs will ultimately restrict the competitiveness and maturity of Australia's industries, limiting their growth and effectiveness⁹.

The NSW Government Code of Practice for Procurement presents a good model as to how a government can go about ensuring its services are delivered ethically and legally throughout the supply chain.

The Australian Government should consider stronger language and enforcement that holds Australian business responsible for the activities of their suppliers offshore. It is only when business is responsible for their supply chain that they assess the real cost of offshoring. We know that on this evaluation, when all costs are considered, the Australian services industry is competitive. Through its procurement practices the Australian Government can level the playing field that enables Australian businesses such as call centres and ICT providers to compete for subcontracting work.

We urge the government to look at examples such as NSW to regulate the supply chain for government services and give Australian jobs and businesses a fair go in the market for government contracts and subcontractors.

The National Institute of Economic and Industry Research (NIEIR) 2008 and 2012 reports

The ASU, FSU and other unions saw the looming crisis caused by offshoring many years ago. In 2008, the National Institute of Economic and Industry Research (NIEIR) was commissioned by the ASU, FSU and other concerned unions to produce their first report into offshoring.

The NIEIR 2008 report¹⁰ found that (for the base case) 850,000 Australian jobs are at risk of being lost offshore over the next two decades. This represented just under 10 per cent of total service sector employment and 8.2 per cent of total employment. The study also found that the majority of employment losses would be concentrated in the professional and managerial skill occupations.

Short-term strategies were proposed and included:

1. review of the tax system to remove any incentives or other benefits to off-shore and create an incentive for companies to develop target competencies in Australia;
2. review Free Trade Agreements to ensure Australian business operates on a level playing field; and
3. introduction of 'Right to Know' legislation (similar to 'Country of Origin') so domestic customers wanting to support businesses that source services locally will have the ability to do so.

In 2012 the ASU and FSU commissioned NIEIR to update their original report into offshoring that was released in 2008. The new report¹¹ confirmed business off-shoring practices are costing Australia 20-25,000 administrative and financial services jobs every year. It also estimates that an expected 700,000 to 1 million jobs will be moved off shore in the next three decades.

Occupations experiencing high rates of off-shoring are in ICT, financial services and administrative occupations.

The NIEIR report advised that the following classifications are at greatest risk:

1. **General Clerks**
2. **Specialist Clerks**
3. **Accountants**
4. **Bank Workers & Credit and Loans Officers**
5. **Software and Applications Programmers**
6. **Call Centre and Telemarketers**
7. **Contract, Program and Project Administrators**
8. **ICT Support Technicians**
9. **Keyboard Operators**

The off-shoring of these jobs is a short sighted strategy on the part of Australian businesses. Australian workers cannot compete on wages with their Asian counterparts, nor should we try to.

To secure the service sector jobs of the future Australia must compete on service delivery, technology and innovation in order to have the edge in a global jobs market. If we are to be a nation that invests in jobs that will place Australia at the forefront of service delivery in the Asian region we cannot afford to allow white collar jobs in finance, telecommunications, information technology, aviation and travel, legal services and data storage to be off-shored.

The report found there is evidence that failure to deal with competitiveness of Australia's services industries is impacting the government's ambition to move toward being a knowledge-based economy and undermining the significant investment being made in education and training services.

Public opinion

Industry and independent surveys have regularly demonstrated that elements of the community most at risk of offshoring, and indeed the community at large, strongly believe the Government should do more to protect local, Australian jobs.

In a 2013 Essential Media poll 74% of Liberal/Nationals, 76% of ALP voters and 75% of Green voters indicated that they believed the government should do more to protect services jobs from offshoring¹². Further to this poll, Bankmecu undertook an online survey of customers in which 45% said they would stop doing business with a company if it offshored Australian jobs and 41% said they might¹³.

An unpublished poll by the Australian Council of Trade Unions in March 2013 revealed out of the 8 issues of concern in Australia, the increasing % of jobs being "offshored" was the number one concern of respondents, with over 65% being extremely concerned or very concerned and over 20% moderately concerned.

Australian communities are increasingly exposed to the experience of offshoring. As a direct result individuals are increasingly hostile to the practice of outsourcing local employment. As the rate of offshoring increases it can be expected that community hostility will grow and opinion polls will demonstrate a preference for Australian employment.

Overseas experience on procurement/offshoring - United States Call Center Worker and Consumer Protection Bills

Other legislators have attempted to address the issue of offshoring white collar jobs through government procurement policies in their countries. Two recent examples in the United States provide interesting examples of what one of the world's largest economies is doing to keep jobs onshore by leveraging the power of government.

2011 Bill

This was the first of two Bills introduced by Congressman Tim Bishop (D-NY) which sought to end support from the United States Government for companies who offshore services jobs. It was also designed to empower consumers in the United States to exercise real choice about whether they would support call centres being offshored.

By introducing this Bill, Congressman Bishop sought to disincentivise offshoring by mandating transparency on the register and at point of contact with customers. It also sought to remove eligibility for grants and guaranteed loans and make it harder for firms who offshore call centre jobs to win government contracts.

Unfortunately, the Republican House Majority leadership did not support the Bill, despite several Republican members of the House sponsoring it. According to Congressman Bishop, the Bill "was denied a floor vote by GOP Leadership in the House of Representatives despite attracting 135 bipartisan cosponsors".¹⁴

2013 Bill

The second bill introduced by Congressman Tim Bishop (D-NY) regarding offshoring of workers was introduced to the House of Representatives on 1 August 2013.

The Bill is similar to the 2011 Bill introduced by Congressman Bishop, but has one small difference:

Section 3(a) subparagraph (2)(C) provides that "*The Secretary may remove an employer from the list required by subparagraph (A) if the Secretary determines that the employer has relocated a call center from a location outside of the United States to a location in the United States*".¹⁵

The Bill is currently in the committee stage.

The Bills introduced to the United States Congress were premised on the idea that the federal government of the US should stop supporting companies financially who offshored.

This appeared to be both symbolic, in the sense that those supporting the Bills wanted the Government to ‘name and shame’ those who offshored by creating a register, as well as economic. A freeze in government support for those who offshore could assist in making offshoring less attractive financially because the incentives provided by jurisdictions seeking to attract offshoring companies could be outweighed, or at least partly negated. This diminishing direct financial margin, combined with the potential reputational damage and other risks associated with offshoring, could encourage some businesses to return to domestic labour.

These examples from the United States show the significant intervention that is being proposed by the US Congress to ensure government contracts create jobs in the United States. It will be open to current Australian government to also consider such options. We do not believe that there are any barriers preventing such measures as the following analysis of the Australia-United States Free Trade Agreement indicates.

The Australia-United States Free Trade Agreement

Australia has certain obligations in regards to Government procurement under the Australia-United States Free Trade Agreement (AUSFTA). These obligations are discussed in detail below.

It is unlikely that legislation similar to Congressman Bishop’s offshoring Bills would have any impact on Australia’s obligations under the AUSFTA.

The first relevant obligation is in Article 15.2 of the AUSFTA:

2. A procuring entity of a Party may not:

*(a) treat a locally established supplier less favourably than other locally established suppliers on the basis of degree of **foreign affiliation or ownership**; nor*

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party. (emphasis added)¹⁶

It appears that discrimination or preferential treatment being given to domestic suppliers based on level of outsourcing does not fall under this prohibition. The words ‘foreign affiliation or ownership’ appear concerned with the ownership and structure of the company, whether by or involving foreign companies or governments. This provision does not appear to be concerned with discrimination based on the location of employees of a wholly Australian-owned company offshore, which would appear to be an operational decision not going to the ownership or affiliation of a company.

The other requirements in Chapter 15 regarding tenders are couched in broad terms, such as Article 15.9. The relevant provision is as follows:

Awarding of Contracts

5. A procuring entity may not consider a tender for award unless, at the time of opening, the tender conforms to the essential requirements of all notices issued during the course of a covered procurement or tender documentation.

6. **Unless a procuring entity determines that it is *not in the public interest to award a contract*, it shall award a contract to the supplier that the entity has determined satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the *lowest price, the best value, or the most advantageous, in accordance with the essential requirements and evaluation criteria* specified in the notices and tender documentation.**

7. A procuring entity may not cancel a covered procurement, nor terminate or modify awarded contracts so as to circumvent the requirements of this Chapter. (emphasis added)¹⁷

Clause 15.9.6 appears to allow significant scope for policy considerations to be incorporated into tendering processes, so long as they are not fundamentally discriminatory on the sole basis of foreign ownership or affiliation (per Article 15.2). It is likely that a preference being given to companies not on a register of offshoring companies would not breach the provisions of Chapter 15 of the AUSFTA.

Keep Australian Services Sector jobs onshore

Government procurement has changed rapidly and continues to do so. Today, the procurement life cycle spans sourcing strategy, supplier selection, contract management, supplier relationship management, and purchasing and supplier integration. Procurement is now seen as one of the top value creators in any business or government agency, and fundamental to government service delivery¹⁸.

The ASU and FSU acknowledge the importance of an effective procurement policy but maintain keeping Australian services sector jobs onshore is vital to Australia's ability to stay afloat as a modern economy of the future. White collar jobs are the Australian jobs of the future. Below are five important strategies our Service Sector should implement:

1. Develop a Services Sector Industry plan

Developing a white collar services sector plan that focuses on areas including; future job needs, skills and training, domestic and regional growth opportunities, leveraging new technologies, infrastructure development to support industry development and investment potential.

2. Review tax incentives and disincentives to retain Australian jobs and competitiveness

Building of tax incentives designed to retain jobs in Australia as these jobs will contribute to the ongoing development of Australian competencies and competitive advantage. These incentives must be aimed at creating a more favourable tax treatment for income earned in Australia compared to income earned from offshoring work that was/could be undertaken in Australia.

3. Introduce “Right to Know” legislation – consumer consent and privacy

Free Trade Agreements that amount to little more than political treaties that achieve diplomatic purposes but do not advance Australia’s trade position should be immediately re-examined. Future agreements must be negotiated on the basis of real benefit to Australia generally and specifically for those parts of the economy regarded as Australia’s core competencies.

4. Free trade agreements need to benefit Australians

Given that services often involve the passing of information and data on individuals, Australia should introduce ‘country of origin’ legislation for services to match similar requirements for manufactured goods. This will involve the development of a framework to:

- ensure that consumers, businesses and government have transparency as to where services are provided from.
- allow consumers to make decisions about where their data is stored.

Government will lead the way in ensuring the private, personal, financial and health records of its citizens that it maintains is kept secure onshore and protected in accordance with Australian laws.

5. Government procurement policy needs to focus on supply chains, Australian providers

As a major purchaser of goods and services, Government policy will ensure through its own procurement arrangements to only contract companies to provide goods and services to and for the government that:

- have transparent supply chains
- onshore its labour needs and forego off shoring
- have a track record of ethical employment practices.

To achieve the goal of keeping white collar service sectors jobs onshore Government should also consider whether it wants to enact legislation similar to what is currently before the United States Congress.

Conclusion

Australia cannot allow the services sector to follow the same path as manufacturing where competencies (skills and knowledge combined with invested capital) are transferred overseas effectively removing the sector’s foundations¹⁹.

As evidenced in both NIEIR reports offshoring tends to decrease employment in this country as jobs are exported. This is not in the interests of the Australian community. If the consequences of offshoring include less tax being paid here and increasing unemployment, there may be fewer goods and services purchased by consumers here. This will impact on profits of enterprises here, including those that have initiated the offshoring.

We need a service sector plan: a strategic approach to develop service skills and business like we have for industries such as manufacturing. Australia can stem the tide of offshoring by offering a more favourable tax treatment for companies retaining work in Australia and by encouraging business to develop Australian competency to ensure our skills base is not irretrievably hollowed out.

In light of the data sensitivity of services jobs government must also consider the introduction of a “right to know” legislation to protect consumers’ along with “country of origin” legislation to ensure transparency as to where services are provided from.

Offshoring frequently diminishes the quality of the work performed by underestimating the necessary synergies provided by internal providers, and the resultant deskilling of the workforce is a major blow to the competitiveness and sustainability of our services sector.

Government procurement has the potential to become a powerful tool for increasing the quantity and quality of employment in key parts of the services sector. Our community pays taxes to government on the basis that these taxes are used to preserve and improve our collective quality of life. It is therefore legitimate to expect that when government spends our money via public procurement it is used partly to help enhance the quantity and quality of jobs in Australia.

At the very least, government should be leading the way with a responsible procurement policy.

Recommendations

It is proposed that the following legislative measures be enacted:

Preference in Contracting

1. That the Government require agencies bidding for government contracts through a tender process or providing quotes to government for other procurement to disclose where the relevant work will be performed.
2. That preference be given to bidders who will perform the work in Australia.

Ethical Procurement in the Service Sector

1. That Government is committed to using its purchasing power to ensure that workplaces in the service sector contracted to perform work for the Commonwealth are ethical, fair and safe.
2. That Government procurement decisions are based on ethical as well as value for money considerations.
3. That Government has a responsibility to lead by example. This means that Government should not be associated with the purchase of services produced from the labour of exploited offshore workers.
4. That only companies who comply with relevant legislation including the Fair Work Act and workers compensation legislation, awards and collective agreements will be considered for government contracts.

Legislative agenda

1. That Government consider enacting legislation similar to the United States Call Centre Worker and Consumer Protection Bill 2 that is currently before the US Congress.

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