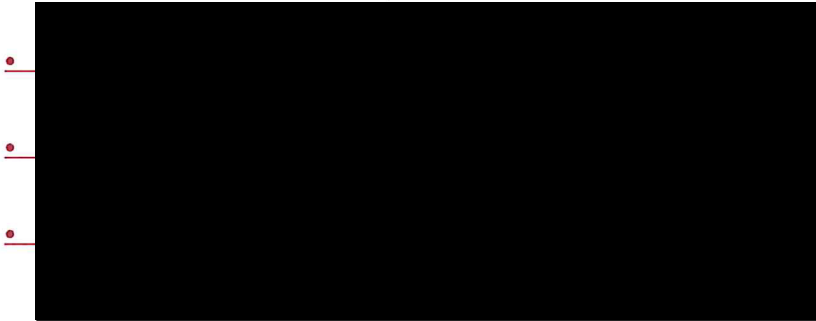


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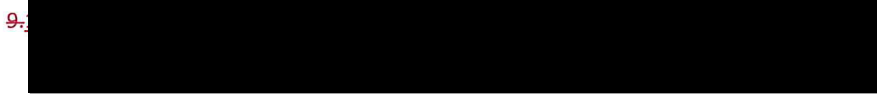
10. As the then Minister for Education, Minister Rattenbury MLA, wrote to UV on 27 June 2016 advising that a review had been undertaken on his behalf by CMTEDD (Attachment B). He advised UV that, to date, neither the Federal Court nor the ACT Government assessments had found any clear breach of the cleaning contracts or its conditions.

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11. An action requested by Minister Rattenbury was the implementation of an audit program to be undertaken by Procurement and Capital Works (PCW) to assess industrial relations compliance. EDU will again address this action with PCW.

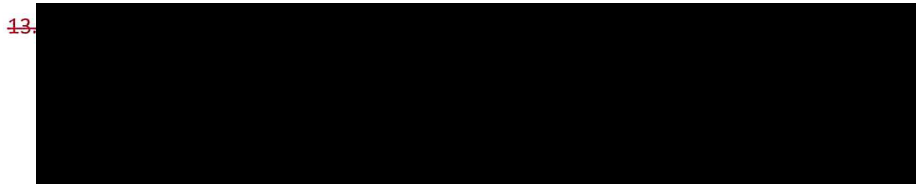
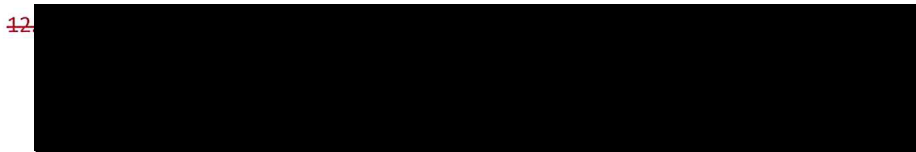
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10.13. With regard to the WH&S concerns raised by UV, EDU attended a site safety inspection at Alfred Deakin High School in September 2015. A number of minor compliance matters were identified, which were subsequently rectified by the cleaning contractor.

11.14. To test the compliance of cleaning contractors, EDU commissioned a specialist WHS reviewer to inspect a sample of cleaning services at school sites. This identified a number of minor non-compliance matters across a number of sites, which were able to be rectified by contractors.



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Legal Matters

14-17. A legal dispute has been brought before the Fair Work division of the Federal Court by UV against a cleaning contractor, Phillips Cleaning Services Pty Ltd. This is in relation to the non-payment of wages to cleaning staff during school term breaks.

- EDU is not a party to the proceedings, but was served a subpoena by United Voice, which resulted in the production of documents to the court in September 2016. EDU complied with the requirements of the subpoena; and
- this Federal Court matter is not a matter that either the Minister nor the Directorate can comment on at this time.

15-18. An FOI request had been made by UV in relation to dealings between EDU personnel and the 3 identified cleaning contractors. EDU had released information, which UV subsequently appealed to the ACT Civil and Administrative Tribunal (ACAT).

16-19. Final submissions have been presented by EDU and UV to ACAT, with a final decision by ACAT expected soon.

Procurement Process

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22. [REDACTED]

23. [REDACTED]

Financial Implications

24. [REDACTED]

25. [REDACTED]

26. [REDACTED]

27. [REDACTED]

Consultation

Internal

28.31. ICW manages the cleaning contracts. ICW is also managing the procurement process for the new cleaning contracts.

29.32. Schools oversight the performance outcomes of cleaning services at each school site. Performance reviews are undertaken by schools each semester.

30.33. Strategic Finance (SF) facilitated the independent audit review of EDU’s

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investigations into the allegations and the independent WHS review. [REDACTED]

Cross Directorate

31.34. The ACT Government Solicitor's Office provided legal advice in relation to the contract compliance matters and the FOI appeal processes.

32.35. CMTEDD undertook the detailed review of EDU's investigation processes.

33.36. [REDACTED]

External

34.37. UV was provided regular updates on the progress of EDU's investigations into their allegations.

35.38. Legal counsel reviewed the contract compliance matters. Separate legal counsel represented EDU before ACAT.

Benefits/Sensitivities

36.39. Further sensitivities may arise following the outcome of the Federal Court proceedings.

37.40. [REDACTED]

38.41. [REDACTED]

Media Implications

39.42. Adverse media attention may be expected:

- if UV continue to pursue Phillips Cleaning Services and/or find any notifiable misconduct; or
- following the finalisation of court proceedings between UV and Phillips Cleaning Services Pty Ltd; or
- [REDACTED]

Signatory Name: Natalie Howson

Phone: 6205 5198

Action Officer: John Wynants

Phone: 6207 6541

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7



MINISTERIAL BRIEF

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To: Minister for Education and Early Childhood Development

Tracking No: MIN16/858

CC

From: Director-General *25/11*

Date: *25* 17 November 2016

Subject: School Cleaning Contracts

Critical Date: Nil

Critical Reason: Nil

Purpose

To provide a brief on priority issues concerning school cleaning contracts.

Recommendations

That you:

1. Note the information contained in this brief, in particular:

- a. [REDACTED]
- b. legal actions taken by United Voice are continuing.

Noted / Please Discuss

2. [REDACTED]

Noted / Please Discuss


Yvette Berry MLA/...../.....

Minister's Office Feedback

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Background

1. The Education Directorate manages eighty-eight (88) school cleaning Services Contracts under a Panel Deed which encompasses twenty-three (23) cleaning contractors (i.e. 87 schools plus the Hedley Beare Centre for Teaching and Learning (HBCTL) centre).
2. Over the last eighteen months there have been multiple allegations by the cleaning employees union, United Voice (UV), and legal disputes involving three cleaning contractors. This extended to include a Freedom of Information request by UV.
3. 
4. Rates paid to school cleaning contractors are paid under the Clean Start Agreement and payable to school cleaning employees from 1 July 2016 as:
 - a. Cleaning employees pay rate of \$28.48/ hour, which was an increase of 4% as per the Clean Start Agreement from the previous year; and
 - b. Contractors rate of \$39.92/hour (ex GST), in line with the formula used for the current Panel Deed.

Issues**General Matters**

5. Infrastructure and Capital Works branch (ICW) manages the contracts with cleaning contractors. This is focussed on compliance matters, including the annual Ethical Suppliers Declaration and police checks for cleaning employees. A current review of police checks is being finalised. When requested, annual Ethical Supplier Declarations are submitted by cleaning contractors, with no matters of concerns identified from those declarations.
6. Schools undertake twice yearly performance reviews with cleaning contractors. These identify a high level of satisfaction by schools with the performance of cleaning contractors (in the range 75% to 98%). This has been consistent for period 2014 to 2016.
7. Where school cleaning performance is not satisfactory, these issues are addressed by the contract manager and schools. Where warranted, cleaning contractor services have been terminated.

Complaints and Allegations

8. Complaints and allegations were first raised by UV on 17 July 2015, and involved three cleaning contractors – Phillips Cleaning Services, Rose Cleaning Services and Rose Cleaning Group. The concerns by UV relate to contract compliance and industrial relations matters:
 - unauthorised sub-contracting;
 - non-payment of wages during school stand down periods;
 - underpayments to cleaning employees; and
 - intimidation of cleaning employees.

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Subsequent allegations regarding workplace health and safety (WHS) practices and possible fraudulent activity were also received.

9. The actions taken by the EDU to address the complaints are:

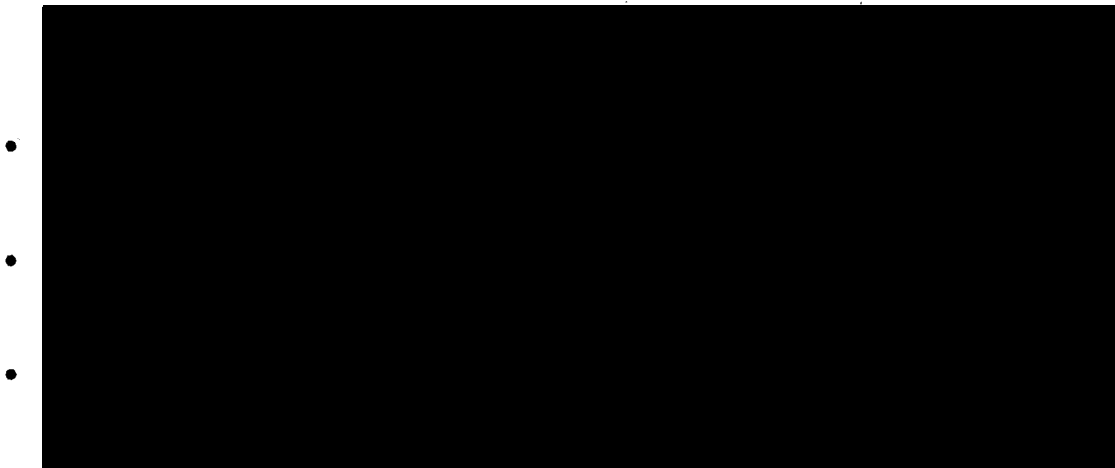
- an initial review by EDU of the information provided by UV found no evidence of sub-contracting. [REDACTED]
- all cleaning contractors were reminded of their responsibilities under the Panel Deed and the Service Contract, in particular employee relations matters;
- cleaning contractors had been required to return an amended form of the Ethical Suppliers Declaration, with a focus on industrial and employee relation matters. There were no issues of concern to the Directorate arising from those returns;
- a compliance checking program was implemented by EDU which had focussed on employee entitlements and the relationship between the employee and contractor – this included 28 schools (30 sites) and 8 contractors. There were no issues of concern arising from the compliance checks, with employee entitlements correctly paid (wages rates, long service leave and superannuation);
- an independent audit review was commissioned of EDU's processes to address the allegations made by UV. [REDACTED]
- legal counsel was engaged on behalf of the Directorate to review the matters investigated by EDU. [REDACTED]
- some allegations were also presented to the Commissioner for ACT Revenue;
- on behalf of the former Minister for Education, the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) completed a review of EDU's processes in investigating UV's allegations. [REDACTED]

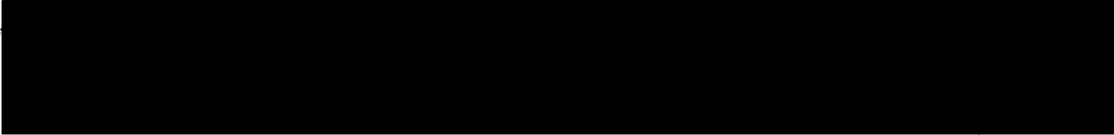
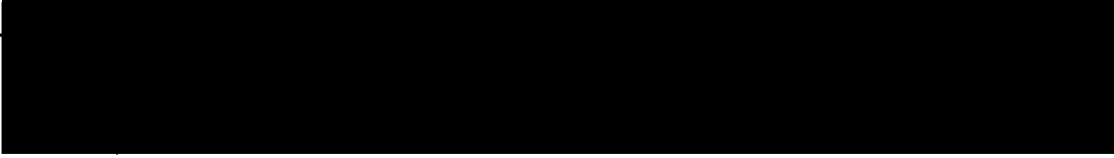

10. The review undertaken by CMTEDD was completed by the Director, Public Sector Workplace Relations (Mr Russell Noud). The report was delivered directly to the then Minister for Education (Attachment A). The review included an assessment of the chronology of complaints and allegations made by UV and the actions taken by EDU. The conclusions include:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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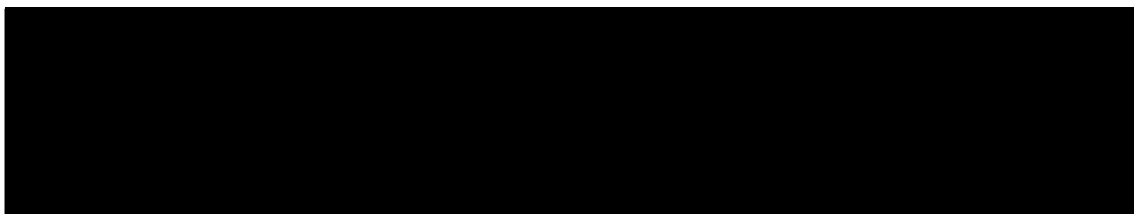
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11. As the then Minister for Education, Minister Rattenbury MLA, wrote to UV on 27 June 2016 advising that a review had been undertaken on his behalf by CMTEDD (Attachment B). He advised UV that, to date, neither the Federal Court nor the ACT Government assessments had found any clear breach of the cleaning contracts or its conditions.
12. An action requested by Minister Rattenbury was the implementation of an audit program to be undertaken by Procurement and Capital Works (PCW) to assess industrial relations compliance. EDU is addressing this action with PCW.
13. As advised by Minister Rattenbury to UV, EDU wrote to the school cleaning contractor (Phillips Cleaning Services) on 20 June 2016 advising of its powers under the contract to undertake periodic audits (refer to Attachment D).
14. 
15. With regard to the WH&S concerns raised by UV, EDU attended a site safety inspection at Alfred Deakin High School in September 2015. A number of minor compliance matters were identified, which were subsequently rectified by the cleaning contractor.
16. To test the compliance of cleaning contractors, EDU commissioned a specialist WHS reviewer to inspect a sample of cleaning services at school sites. This identified a number of minor non-compliance matters across a number of sites, which were able to be rectified by contractors.
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- EDU is not a party to the proceedings, but was served a subpoena by United Voice, which resulted in the production of documents to the court in September 2016. EDU complied with the requirements of the subpoena; and
 - this Federal Court matter is not a matter that either the Minister nor the Directorate should comment on at this time.
20. An FOI request had been made by UV in relation to dealings between EDU personnel and the 3 identified cleaning contractors. EDU had released redacted information, which UV subsequently appealed to the ACT Civil and Administrative Tribunal (ACAT).
21. Final submissions have been presented by EDU and UV to ACAT, with a final decision by ACAT expected soon. As referenced in Minister Rattenbury's letter to UV and EDU's letter to Phillips Cleaning Services, EDU will be implementing an audit program through Procurement and Capital Works agency to maintain contractor compliance with their industrial relations obligations under the contract.

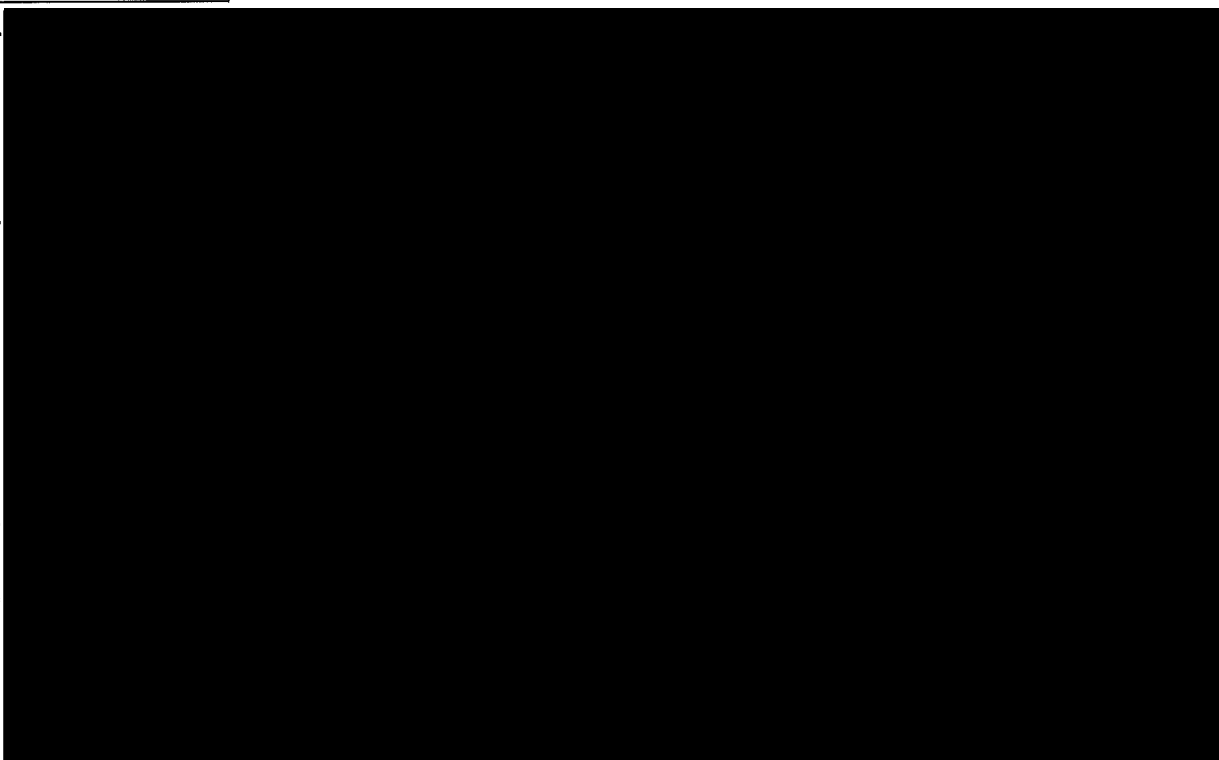
Procurement Process

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Financial Implications

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ConsultationInternal

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into the allegations and the independent WHS review. [REDACTED]
[REDACTED]

Cross Directorate

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41. Further contract performance issues may arise following the outcome of the Federal Court proceedings. This will be closely monitored.

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- if UV continue to pursue Phillips Cleaning Services and/or find any notifiable misconduct; or
- following the finalisation of court proceedings between UV and Phillips Cleaning Services Pty Ltd; or
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Signatory Name: Natalie Howson

Phone: 6205 5198

Action Officer: Meredith Whitten

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