

## Form G

Commonwealth of Australia  
*Competition and Consumer Act 2010 — subsection 93 (1)*  
**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

### 1. Applicant

(a) Name of person giving notice:

N97774 Metro Trains Melbourne Pty Ltd (43 136 429 948) (**Metro Trains**)

(b) Short description of business carried on by that person:

Provision of public transportation in Melbourne through the operation of trains on the metropolitan train network.

(c) Address in Australia for service of documents on that person:

Level 24  
1 Spring Street  
Melbourne Vic 3000

### 2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

All services provided by Metro Trains and PICS Auditing Pty Ltd (**PICS**) as part of the process under which Metro Trains procures good and services from contractors and suppliers.

(b) Description of the conduct or proposed conduct:

Metro Trains will not acquire goods and services from contractors and suppliers unless they have obtained pre-approval from PICS. Pre-approval involves an assessment by PICS of the degree to which the contractors and suppliers of goods and services comply with the policies and procedures of Metro Trains, including in respect of policies concerning matters such as qualifications, licensing requirements, insurance, occupational health and safety, environment, quality, anti corruption and bribery. Contractors and suppliers of goods and services register with PICS, provide various documentation and information and pay certain fees, in order that PICS can

assess the extent to which the contractor or supplier complies with the relevant policies and, where appropriate, grant pre-approval to the contractor or supplier. Attachment 1 contains the letter which Metro Trains proposes to send to its potential contractors and suppliers of goods and services advising of the requirement to register with PICS in order to be considered for engagement.

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:  
Contractors and suppliers of goods and services who may potentially undertake work for Metro Trains.
- (b) Number of those persons:
  - (i) At present time:  
More than 50.
  - (ii) Estimated within the next year:  
More than 50.
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:  
Not applicable.

**4. Public benefit claims**

- (a) Arguments in support of notification:  
Refer to attached submission.
- (b) Facts and evidence relied upon in support of these claims:  
Refer to attached submission.

**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Refer to attached submission.

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods

or services described at 2 (a) above and the prices of goods or services in other affected markets:

Refer to attached submission.

- (b) Facts and evidence relevant to these detriments:

Refer to attached submission.

**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Jason Westwood

0407 297 484

Dated... 5 September .....

Signed by/on behalf of the applicant

C A Speers .....

(Signature)

Catherine Speers

(Full Name)

Metro Trains Melbourne Pty Ltd

(Organisation)

Company Secretary

(Position in Organisation)

# Submission

## Background

Metro Trains frequently procures goods and services from contractors and suppliers. Metro Trains has a number of policies and procedures that it requires contractors and suppliers to comply with such as, for example, requirements concerning qualifications, licensing requirements, insurance, occupational health and safety, environment, quality, anti corruption and bribery.

PICS provides a service which assists in managing and monitoring the compliance of contractors and suppliers with those policies and procedures. In particular, PICS hosts an exchange platform through which contractors and suppliers can provide information and documentation regarding their compliance with those policies and procedures. PICS assesses the extent to which the contractors and suppliers are compliant with those policies and procedures.

In order to obtain the full benefit of the efficiencies created by the PICS exchange platform, Metro Trains intends to only acquire goods and services from contractors and suppliers that have obtained pre-approval from PICS. This has the effect that all potential contractors and suppliers are required to register with PICS and provide the necessary documentation and information to enable PICS to assess the compliance of those contractors and suppliers.

The parties are notifying the Commission on the basis that there exists a technical risk that such an approach may be characterised as comprising third line forcing pursuant to sections 47(6) or 47(7) of the *Competition and Consumer Act 2010* (Cth) (Act). Metro Trains and PICS believe that there are considerable public benefits arising from this conduct and no material public detriments such that the Commission may permit this notification to stand in accordance with sections 93(3A) and 93(7A) of the Act.

## Public Benefit Claims

The notified conduct gives rise to a number of public benefits including the following:

1. *Efficiency of contracting by Metro Trains:*

Metro Trains procures a large amount of goods and services using a large number of contractors and suppliers. Contractors and suppliers undertaking such work must comply with a number of policies and procedures such as those outlined above. The service provided by PICS would enable Metro Trains to easily see which of its potential contractors and suppliers comply with its policies and procedures and could thus be contracted to provide goods and services.

As such, this service would be efficiency enhancing by removing the need for Metro Trains to check the compliance status of a large number of potential contractors and suppliers for each of the many goods and services that it sources and therefore freeing up its employees to award contracts more quickly and with greater focus on other aspects of the contract.

2. *Efficiency for contractors and suppliers in standardised management and monitoring of compliance issues:*

Contractors and suppliers seeking to undertake work for Metro Trains are required to comply with a number of policies and procedures. The service provided by PICS would enable those contractors and suppliers to easily provide the information and documentation necessary to demonstrate compliance with those policies and procedures. Further, it would remove the need for such documentation and information to be provided more than once, even if the contractor or supplier was tendering for multiple projects with Metro Trains or other clients of PICS.

As such, the service provided by PICS would be efficiency enhancing by decreasing the administrative burden on contractors and suppliers of ensuring compliance with the policies and procedures of Metro Trains.

3. *Efficiency of information flow between Metro Trains and contractors and suppliers:*

Metro Trains has a number of policies and procedures which must be complied with by a number of contractors and suppliers.

It is necessary for all potential contractors and suppliers to demonstrate that they comply with each of the relevant policies and procedures in order to be considered for engagement. The service provided by PICS would increase the efficiency of that process because of the standardised and easy to use format in which the information is provided to Metro Trains.

4. *Improved quality of work undertaken by contractors and suppliers:*

Increasing the efficiency of the engagement process has the potential to result in higher quality work being undertaken by contractors and suppliers for a number of reasons including the following. First, by ensuring contractors and suppliers are compliant to Metro Trains policies and procedures a high quality level of work can potentially be achieved. Second, those contractors and suppliers can shift resources from administrative issues such as demonstrating compliance with certain contracting policies to the completion of the substantive work. Third, the fast provision, and easy to use format, of the compliance information provided by PICS places Metro Trains in a better position to choose the best contractors and suppliers to undertake the work.

Fourth, reducing the cost of compliance may allow the parties to spend a larger percentage of their respective budgets on the substantive work being undertaken.

5. *Consistency of assessment of contractors*

The service provided by PICS allows for the assessment of the compliance of contractors and suppliers to be undertaken on a consistent basis by dedicated, full time professional staff that are solely dedicated to the task. This comprises a benefit for both Metro Trains and the contractors and suppliers.

It is not easy to quantify the value of these benefits. As such, Metro Trains has not sought to do so.

**Market definition**

The markets relevant to the notification are the markets for:

1. the supply and acquisition of contractor and supplier goods and services; and
2. the supply of services to manage and monitor compliance with contracting policies of entities acquiring services from third party sub-contractors.

**Public detriments**

The notified conduct does not give rise to any public detriment of significance. In this regard, it is useful to explain the following in order to remove any potential misconceptions:

1. *Requirement for contractors and suppliers to deal with a separate supplier of services to manage and monitor compliance with policies and procedures such as PICS:*

Under the proposed arrangements, contractors and suppliers would be required to register with PICS, pay certain fees and provide various documentation and information. At a superficial level, this would place an administrative burden on contractors and suppliers and may result in some contractors and suppliers being ineligible to receive certain work from Metro Trains.

However, absent the pre-approval review undertaken by PICS, Metro Trains would need to undertake an equivalent review. To facilitate that review, each contractors and suppliers would have to submit the same documents and information to Metro Trains and Metro Trains employees would have to spend time undertaking the review. In consequence, the arrangements are not likely to create any additional administrative burden or reduce to any material degree the number of contractors and suppliers that are able to undertake work for Metro Trains.

2. *Requirement for contractors and suppliers to deal with PICS rather than alternative suppliers of services to manage and monitor compliance with policies and procedures:*

Metro Trains is able to harness the full efficiencies of the service offered by PICS by ensuring that its potential contractors and suppliers are all registered with PICS. As such, the use by Metro Trains of a single supplier of services to manage and monitor compliance with policies and procedures enhances the efficiency of the proposed arrangements.

3. *No reduction in competition arising from the proposed arrangements*

The degree of competition in the market for the supply of contractors and supplier goods and services is not diminished by the proposed conduct. Instead, the proposed conduct represents a more efficient means for the acquirer, and the suppliers, of goods and services to monitor and manage compliance with the policies of the acquiring entity. For example, a contractor or supplier which does not have up to date occupational health and safety certification would likely not achieve pre-approval. However, that same supplier would not have been likely to win a tender in the absence of the PICS process because the acquirer would have identified in reviewing the tender response that the supplier did not have that certificate (which may result in non-compliance with the tenderer's policies).

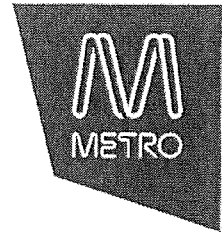
Indeed, the service provided by PICS is likely to improve efficiency in the market for the supply of goods and services by making it easier for contractors and suppliers to ensure compliance with the relevant policies and by making it easier for tenderers to ensure compliance with those policies so that they can devote resources to other areas.

The degree of competition in the market for the supply of services to monitor and manage compliance is not diminished by the proposed conduct. This is because there are a very large number of entities that acquire services from contractors and suppliers and the proposed conduct is only being undertaken by a single entity.

In consequence, the public benefits clearly outweigh the non-existent public detriments.

**Attachment 1 - Proposed letter from Metro Trains**





**Dear Valued Metro Partner**

On 22 September 2014, the Rail Industry Contractor and Supplier Qualification Program will be launched. This endeavor will be a foundational element of our ongoing commitments to moving passengers safely and efficiently across our network, and to providing a safe, healthy and compliant work environment for all Metro Trains Melbourne Pty Ltd (Metro) partner companies, employees and the Australian Rail Industry.

PICS Auditing Pty Ltd (PICS) will provide the technical backbone of this initiative. Through the PICS cloud based risk management solution, we will evaluate all partners on safety, quality, technical, environmental, insurance, financial, sustainability, operational and rail specific performance criteria. The criteria have been calibrated to the specific type and unique risk profile of work undertaken. The ongoing collection, audit and analysis of related data will enable Metro to ensure compliance and operational improvement in real time across its value chain.

This notification serves as your official request for participation in the program. You will be provided access to information resources and dedicated support professionals to ensure your understanding of the qualification process and to provide assistance in your efforts to complete it. Over time, we will continue to roll out additional resources, including information sessions, to further facilitate and streamline the process for everyone involved.

Metro is fully committed to this mutually beneficial initiative and will work only with partner companies that exhibit a willingness to move down this path with us. Together, we will make Metro the model of safety and sustainability for the Australian Rail Industry and beyond.

This initiative represents a significant progression in how we engage and evaluate the performance of our partners and we are highly confident in both its short and long term benefits. Metro's vision is to work with the Rail Industry to develop this essential program and in turn the safety, sustainability and compliance.

Please find attached insights into the process, key milestones and timelines for completion; as well as the benefits your company will realise through participation in this program.

Regards

**Andrew Lezala**  
**Chief Executive Officer**  
**Metro Trains Melbourne Pty Ltd**



## PICS Registration & Qualification Process

### Phase I: Registration (Required by: 31 October 2014)

- Visit the PICS website at [www.picsauditing.com/au](http://www.picsauditing.com/au) and click the "REGISTER" button at the top-right of the page.
- Enter your company information on the registration page.
- Add Metro as the client site you'll be working for.
- Complete the Service Evaluation questionnaire.
- Submit payment of your service fee.

**Note:** If you require assistance at any point in this process, you may speak to a dedicated customer service professional by dialing 1800 502 142.

### Phase II: Prequalification (Required by: 5 December 2014)

- **Complete the Prequalification Form (PQF)** – The first part of the review process requires Contractors and Suppliers to complete and submit a prequalification form. Please note, if you are already a registered member with PICS, you must log in to the website, link your company to Metro and provide the required information.
- **Upload Your Safety Program Documentation and Insurance Certificates** – Even if you have already provided Metro with a copy of your safety program and insurance certificates of currency, please upload your current information on the PICS website. Be sure to verify that your insurance certificates of currency meet the Metro insurance requirements before uploading.
- **Respond to Any Audit Questions** – After your paperwork is submitted, a PICS representative may contact you and ask for any clarification or additional information after the review of the PQF or Safety Manual Audit.

### Phase III: Qualification (Required by: 31 March 2014)

- **"Green Flag" Status** – Once you have achieved green flag status, your company is rated as compliant in PICS, and qualified to work with Metro and other clients within the PICS network.

### Partner Member Benefits

- **Business Growth** – A primary element of the PICS supply chain risk management solution is its marketplace. PICS clients leverage the platform to find and hire new contractors and suppliers that are registered and prequalified within PICS. So not only will you maintain and possibly grow the business you do with Metro, but you will now have an opportunity to earn business from other PICS clients across Australia, and around the world.
- **Support in Sustainability** – PICS provides all member companies with unparalleled support throughout the prequalification and qualification processes. This includes providing contractors and suppliers with expert guidance on safety and sustainability programs, insurance, and more – all of which is delivered at no extra cost.
- **Competitive Equality** – Metro, and all PICS clients, apply the same level of scrutiny to all partner companies, and hold all to the same exacting standards. You can be confident that every company must make the required investment in sustainable business practices in order to maintain and/or expand their business with Metro.
- **Cost Savings** – While there is a cost to your membership with PICS, members consistently realise offsetting cost savings through operational efficiencies, reduced overheads, and reduced insurance premiums. Investing in sustainable business practices is absolutely proven to deliver a positive return on those investments, and PICS helps to accelerate that return.



### **Membership Fee**

There is an annual membership fee, and a one time registration fee for new members. The membership fee is calculated upon client requirements and the number of clients, client locations, and client business units to which you deliver products and services.

The complete fee structure, and your specific cost will be made available to you during the registration process via the PICS website. If you have questions about the cost, please contact a PICS Supplier Enablement representative at 1800 502 142.

### **About PICS**

PICS transforms how enterprises assess and mitigate risk within their supply chains. We simplify the engagement and evaluation of suppliers and contractors to ensure alignment with each client's unique operating principles and regulatory requirements. Our SaaS technology and deep domain expertise enable the comprehensive collection and analysis of operational data to formulate a forward looking risk profile for each partner company. This visibility empowers our clients to hire with greater confidence, knowing that business will be conducted with fewer incidents and disruptions.