



19th August 2015

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission

By email: adjudication@accc.gov.au

Dear Richard

Re: A91493 & A91494 – Job Futures Limited - Submission

ACSO wrote a submission on the 4th May 2015 supporting Job Futures application for Revocation and Substitution of Authorisations and Interim Authorisation for collective tendering for employment services contracts.

We highlighted in our submission that Job Futures (Trading as CoAct) has created a unique model that enables not for profit organisations with a specialist focus like ACSO to deliver quality employment programs as part of their suite of services. Providing employment opportunities bring real value to our services for ex-offenders, we know that jobs change lives.

In our submission we stated that ACSO wholeheartedly agrees that the strength of the Job Futures model is underpinned by the cooperative approach of the members to achieve a common goal in delivering employment services contracts for complex and specialist groups in our communities. We hold a strong view those members who bid with job futures for employment services contracts should not be able to compete against themselves and job futures in alternative bids for the same business. Our view has not changed.

ACSO does however have significant reservations about expanding collective tendering into a range of other, as yet unspecified Government contracts, the proposed non-compete clauses and the proposed changes to the membership charter. I will endeavour to outline these reservations below

ACSO believes that collective tendering can be one of a number of mechanisms for not-for profit entities to achieve their Vision. These can also include entities tendering in their own right for business or with other partners as it sees fit to win business. For example ACSO currently holds a number of contracts in its own right, one in partnership with another entity, and our sub contractor arrangements through Job Futures for the delivery of DES and Green Army programs. Tendering options and bid strategies are different for each organisation and each contract.

Non compete clauses in collective tendering with CoAct for as yet unspecified areas of business or Government contracts poses a big challenge for ACSO and we believe more broadly for the CoAct Network. ACSO has deep concerns that introducing a range of other areas of business can bring with it the exact opposite consequence of what was intended when the network was established. Instead for collaboration the proposed changes can instead pit members against each other and consequently can destabilise the network. For example

- CoAct exists currently as the vehicle to bid for employment related contracts on behalf of its members. There is shared agreement amongst the membership of this direction and vision. There are clear policies and processes in place to resolve any membership problems.
- The strength of the membership of CoAct comes from its members. It comes from the collaboration between members to deliver services and programs and to share best practice to ensure the performance of the entire network is the highest it can be.
- The argument in the paper outlines that membership is voluntary and members can leave at any time if new business entered into competes with their own core business. Surely this does little to strengthen the network?

ACSO completely agrees with Mariliac in its submission to the ACCC that the success of the *current arrangements* are due to the ability of Job Futures and members to work as a collective, sharing information and resources to reach a common goal. In this regard, should Job Futures have the ability to compete with individual members there is a significant risk that it could use its access to information and knowledge relating to the operations of individual members in a competitive tender, which may severely impact the effectiveness of the tender process with external parties and diminish the competitiveness of the market.

The membership charter

ACSO does want to support CoAct to enter new business opportunities on behalf of its member's best interests. However, these areas have not been explored with the membership which it turn is driving some significant uncertainty.

The proposed membership charter and sub-contractor contract changes give ACSO serious cause for concern. Currently 90% of our current business is held in our own right. Our contracts cover a range of services including Disability, mental health, drug treatment and offender programs. These may or may not be areas of business that CoAct will explore to tender for future business.

Membership charter changes have the potential to adversely affect ACSO and more broadly the CoAct network. As noted in the ACC paper, Job Futures is proposing to amend clause 4.1 of its Membership Charter on pursuing new business opportunities in effect, currently those outside employment services.

The current clause 4.1 reads: Job Futures will not submit a tender to deliver new services in a location where that tender is likely to damage the pre-existing business of a member organisation in that location.

Job Futures proposes to replace the clause with the following:

4.1 In assessing new business opportunities that align with Job Futures Ltd strategic objectives, Job Futures Ltd will take into consideration potential impact of these opportunities on the current activities of members and benefit to the network as a whole.

4.2 Job Futures will notify members of its intent regarding tendering for new business opportunities to enable feedback to inform the tender decision and resolution of any potential issues.

ACSO agrees with Marillac who submitted, among other things, that the market for disability support services, which is its core offering is becoming increasingly competitive. Allowing Job Futures to compete with its members in this area is likely to cause detriment to many Job Futures members, including Marillac.

Marillac said the proposed amendments discriminated against it. It said its core disability-services offering contributed a significant proportion of its income. Job Futures encroaching on its historical service offering would be significantly detrimental to its operations. ACSO believes this applies not just to disability contracts but to a range of other service offerings.

The charter also proposes changes at clauses 3.2 and 3.3 that we strongly object to that again have the potential to adversely affect ACSO and more broadly destabilise the CoAct network

“a member must not tender to supply services in its own right for contracts that are held by Job Futures (including successor contracts), without Job Futures’ prior written consent (proposed charter clauses 3.2 and 3.3).

The ACCC paper states that Job Futures has further advised that, to paraphrase: Where Job Futures might be looking for new business that is also in a member’s traditional sphere, that member is free to bid independently and against Job Futures. If Job Futures were to win that new business against an incumbent member, in the event that the member sought to and was in a position to win it back in the next tender round, the member could not bid without Job Futures’ prior written consent. ACSO strongly opposes this.

ACSO cannot support CoActs submission as it currently stands to expand its Interim Authorisation for collective tendering beyond employment services contracts. In order for ACSO to support this application we need CoAct to be clear about the areas of new businesses it intends to bid for on behalf of its members. ACSO needs to be assured that these areas are broadly in the best interests of the network as a whole. In addition ACSO would need to see the proposed changes to the membership charter alter based on our feedback above, and for the membership charter to clearly reflect the future direction of collective tendering.

Should you require clarification or further information on the above, please don’t hesitate to contact me on email: karenza@acso.org.au or via telephone 03 9413 7010

Yours sincerely

A handwritten signature in black ink that reads "Karenza Louis-Smith". The signature is written in a cursive, flowing style.

Karenza Louis-Smith
CEO