

## **NACEW RECOMMENDATIONS ON GOVERNMENT CONTRACTING IN THE HOMECARE, RESIDENTIAL CARE AND COMMERCIAL CLEANING SECTORS**

### **Principles**

1. The government contracting policy applying in respect of all contracts for services in the homecare, residential care and commercial cleaning sectors should be based on principles of fairness, equity and responsibility. This policy should apply whether the government itself is a party to the contract or is merely the funder, as in the case of contracting by District Health Boards (DHBs).

*NACEW has concentrated its research on these three sectors. So while the underlying reasoning behind our recommendations to the Minister appear equally applicable to other areas of public contracting NACEW stops short of making recommendations beyond its focus. NACEW also considers that these three sectors could act as a pilot for a more general public contracting policy.*

*NACEW's recommendations are a principled and pragmatic response to the changed nature of the state, including in the provision of public health services, over the past two decades or so. It recognises that improving the very low pay of many of its most vulnerable citizens who provide essential services to others of its most vulnerable citizens is an investment in human resources with positive economic effects. Put into effect, NACEW's recommendations will improve the quality of services; will improve the self-esteem and well-being of staff; will improve efficiency and productivity through increased skill levels, reduced turnover and the elimination of any discrimination and/or barriers to equality of opportunity; and will lessen the need for state support to workers in these sectors. The NACEW model also maintains the role of the state primarily as an enabler or facilitator of such services, rather than as a direct provider and employer of staff.*

2. The government will only contract (directly or indirectly) with a provider of services (in those three sectors) if that provider:
  - pays a living wage (as opposed to a minimum wage) to those who perform those services; and
  - (as far as is practicable) provides regular and standard hours notified in advance; and
  - pays travel time and expenses for those who are required to travel to different places of work within the working day; and
  - demonstrates a commitment to good labour relations; and
  - demonstrates a commitment to pay and employment equity; and
  - demonstrates a commitment to paid training and skill development for all staff.

*The public contracting policy for these sectors must meet two main concerns. First, it must address the chief causes of precariousness for these sectors: the very low pay, the non-standard hours as well as other incidents of "casualness" such as travel between assignments. Secondly, it must demonstrate that the government does not intend to use public contracting as a way of divesting itself of the*

*responsibility of ensuring that good labour relations prevail in those sectors; that the economic and social justice imperatives for pay and employment equity are supported; and that training is in place to support the expectations of the consumers of the services provided, as well as to contribute to the upskilling of the workforce for the benefit of those workers and the economy as a whole.*

3. The government, in response, will sufficiently fund the provision of services to enable all providers to pay a living wage. Further funding to reflect increased skill levels/transport etc will also be made provided there is transparent basis for this. Where appropriate the government will also contribute by way of funding for paid "on the job" training provided there is appropriate tripartite agreement to this.

*While there are some not-for-profit providers operating in these sectors increasingly the services are provided by for-profit providers. NACEW does not seek to change that through this policy. The government, however, is entitled to be sure that the additional money provided in the contracts is fully used for the purposes in which it was given and therefore there needs to be a mechanism to provide for this transparency. As will be seen below, NACEW suggests that one way is through collective bargaining.*

4. Before contracting with a provider, the appropriate unions will be consulted as to the providers commitment to good labour relations. Further, the terms of the contract in so far as they relate to staff will be disclosed to the appropriate unions who will expressly be empowered to enforce the contract for the benefit of its members if necessary.

*At the moment it is very difficult to ensure that additional funding which the government intends should be used for higher wages is in fact fully directed to that. Further, the sheer number of contracts in these sectors adds to the burden of monitoring. For these reasons, it is sensible to permit unions who have a direct interest in ensuring that money earmarked by government for improved wages is used for that purpose, are expressly permitted to enforce that aspect of the contract between providers and government. Enforcement of contracts by third party beneficiaries is permitted by s 4 of the Contracts Privity Act 1982.*

5. To support the new contracting requirements, the government will provide financial and other assistance to providers, their industry organisations, unions and relevant ITOs in order to build capacity and facilitate the development of new and improved relationships.

*An increased emphasis on skill development, pay and employment equity, and good labour relations may require some support from government to providers, to unions and also to ITOs. This may take the form of technical support to ITOs in developing new training modules and national qualifications, as well as assisting capacity building within unions and providers to enable pay and employment equity audits to be carried out. In those sectors (or parts of sectors) such as homecare, where union density is very low and where there is no current established relationship between employers and unions, support to develop a working relationship should also be provided.*

## Interpretation of principles

6. A living wage is different to a wage set at or just above the poverty threshold. NACEW supports the adoption of the European goal of two-thirds of the average wage, with an immediate rate of \$12 per hour for all publicly funded contracts in these sectors.

*Minimum wages in New Zealand were originally set at around 80 per cent of the average wage. In 1973, they were at two-thirds, which is consistent with international benchmarks such as that used by the European Union. The average wage is currently \$21.90. Two-thirds of this is \$14.60 per hour. NACEW would support a phasing in of the two-thirds figure over three to four years, from a new public contract minimum of \$12 per hour. It would of course move each year in line with wage movements. By way of comparison, the OECD poverty threshold (as distinct to a living wage) is 60 percent of median household income.*

7. When assessing whether there is a demonstrated commitment to good labour relations the following need to be considered:

- whether there is a collective agreement in existence, or if not whether the provider is engaged in the process of negotiating a collective agreement;
- whether the rate of union density amongst the provider's staff is generally representative of the level within the sector, and whether it is increasing or decreasing;
- whether a provider has refused to allow a ballot for a bargaining fee to apply to non-members; and
- the extent of union involvement in the pay and employment equity audit process, as well as health and safety and training issues.

*A requirement for good labour relations as indicated by the above is consistent with the government's own policies as articulated in the Employment Relations Act 2000 (ERA) which has as one of its objectives the promotion of collective bargaining (cf s 3); in the Health and Safety in Employment Act 1992, and the government's policy with respect to pay and employment equity in the state sector. It is also consistent with international standards applying to public contracting and the public sector. In the United States union neutrality clauses are common. Although on the surface union neutrality may appear to be a lesser standard than recommended here, it must be remembered that other than in right to work states, unionised workplaces are all "closed shops". Union neutrality in effect is equivalent to not opposing (and not campaigning against) the holding of a bargaining fee agreement in New Zealand. Such arrangements are consistent with freedom of association principles enshrined in both the ERA and the New Zealand Bill of Rights Act 1990 (Lavigne v Ontario Public Services Union [1991] 2 SCR 211). In the United Kingdom, all new civil service employees are encouraged in their letter of employment to join a trade union of their choice.*

8. When assessing whether there is a demonstrated commitment to pay and employment equity, the fact of whether an audit has occurred and whether the problems identified are being tackled will need to be considered. Training issues such as improved basic literacy skills may also be a relevant factor under this heading.

*As far back as 1965, the United States had, as one of the terms of federal contracting, that firms would have an equal employment opportunity policy (which included pay equity). Similar policies*

were subsequently adopted in other jurisdictions such as Canada and Australia. The equality dimension of public contracting (both in respect of employees and consumers) is also widely acknowledged in the United Kingdom, which has recently through the new Equality Act placed positive duties on all public authorities to eliminate discrimination and improve equality of opportunity. The proposal by NACEW is consistent with the new United Kingdom approach that sets principles and standards but is not prescriptive.

9. The most obvious way in which higher rates for increased skills, provision for on the job training and so on will be transparent will be by way of a collective agreement. IEAs, which are confidential, clearly are inadequate.

*The government is not the employer of the staff and does not want to be setting actual wages and conditions. On the other hand, the government needs to be assured that if it funds higher wages, payments for skill and provides financial support for on the job training that this is being delivered (without slippage) by the provider. One obvious way this can be achieved is through collective bargaining where the outcome is public and therefore transparent. In some instances, there may well need to be some discussion (either jointly or separately) or agreed understanding between the funder and the union and employer parties before any collective agreement could be concluded. However, this is not really any different to that which occurs in other government sectors such as public health and education. The government, albeit the funder, is still removed from the actual employment negotiations.*