

12 October 2021

Select Committee on Job Security
Department of the Senate
PO Box 6100
Canberra ACT 2600

Email: jobsecurity.sen@aph.gov.au

Dear Committee Secretary

Subject: Select Committee on Job Security - Additional questions on notice - 6 October 2021

We refer to your communication to Mr. Leigh Mackender, Managing Director of Service Stream Limited (**Service Stream**) on 6th October 2021, attaching additional written questions on notice from Senator Tony Sheldon relating to Service Stream's appearance before the committee on 15th September 2021.

In **Attachment 1** to this letter we provide answers to each of the questions raised by Senator Tony Sheldon.

Should you require any further clarification, please do not hesitate to contact us.

Yours sincerely

Chris Chapman
General Counsel and Company Secretary

Attachment 1 – Service Stream Limited Response to Additional Questions on Notice: 6 October 2021

Preamble:

In relation to Senator Sheldon's questions, it was not entirely clear whether they were related specifically to the NBN Unify Services agreement (noting that much of the conversation with Service Stream on the 15^h September 2021 was focused on this agreement), our broader nbn operations or the wider telecommunications industry. To provide greater specificity to our answers, in most instances we have provided responses that are specific to the Unify Services agreement (unless otherwise stated).

- 1. *When engaging Primes, do you provide any guidance or set any expectation around what proportion of the rate of pay the Prime can withhold from the technician?***
 - a. If yes, what is that amount?***
 - b. If yes, how is it enforced?***
 - c. If no, how do you ensure that Primes aren't withholding unreasonable sums from technicians?***

As previously advised to the Committee, Service Stream does not engage in a 'Prime contracting model'. Service Stream engages proprietary limited companies as its subcontractors that may engage additional resource under an employee model. Service Stream's framework subcontract does not permit subcontractors to further subcontract their works and services without obtaining Service Stream approval.

- 2. *How many notifiable incidents have your subcontractors suffered over the last five years?***
 - a. What proportion of them were direct subcontractors, and what proportion were subcontractors engaged through Primes?***

There have been no notifiable incidents in relation to the Unify Services agreement. Service Stream has had 5 incidents over the past 5 years across all nbn agreements that were deemed notifiable.

- 3. *How many safety incidents which weren't notifiable incidents have your subcontractors suffered over the last five years?***
 - a. What proportion of them were direct subcontractors, and what proportion were subcontractors engaged through Primes?***

Service Stream has a strong safety culture and robust reporting regime. Over the past 5 years the business has had 785 incidents across all nbn agreements which were not deemed as notifiable. The incidents include but were not limited to minor first aid, vehicle/plant damage, property service damage, near misses and medical treatments.

- 4. Are subcontractors able to negotiate with you on job rates, or do you dictate the rates?**
- a. Are subcontractors engaged by Primes able to negotiate with you directly?**
 - b. Are subcontractors able to negotiate with you collectively?**
 - c. If subcontractors are able to negotiate with you collectively, has it ever resulted in a higher rate of pay for subcontractors? If yes, please provide specific examples.**
 - d. Is it common or uncommon for subcontractors to be successful when they attempt to negotiate a higher rate of pay? If possible, please provide a rough proportion.**

For the Unify Services agreement (which is operated in the same or similar manner as Service Stream's other telecommunications agreement), Service Stream issued an expression of interest (EOI) to the market and its existing subcontractor workforce. The EOI documentation included a proposed rate card for the activities to be performed by the subcontractors. Subcontractors could choose to either respond or not respond to the EOI. For those subcontractors that responded to the EOI, Service Stream commenced the engagement and onboarding process. Additionally, employees of a subcontractor that proceeded to establish their own proprietary limited company and submit an EOI directly to Service Stream, were included in the engagement process.

Service Stream deals directly with its subcontractors on a company-by-company basis and not as a collective. Differing contractual rights do exist between the subcontractor entities engaged by Service Stream.

Subcontractors engaged by Service Stream claim payment for service in accordance with the rate card included in the framework subcontract. The rates included in the rate card are generally consistent among Service Stream's subcontractors.

- 5. When asked about how NBN Co monitors the pay and conditions of NBN technicians, NBN Co said at the hearing:**

"I would say that we work tirelessly to ensure that our contracts are strong and that people are paid fairly."

Please advise in as much detail as possible:

- a. How NBN Co ensures that you pay your subcontractors (including those engaged by Primes) fairly.***
- b. What specific guidelines or expectation NBN Co provides around the rates of pay NBN technicians should receive***
- c. What specific guidelines or expectation NBN Co provides around terms and entitlements NBN technicians should receive***
- d. What specific monitoring or audit actions NBN Co has engaged in with respect to pay and conditions for your subcontractors (including those engaged by Primes)***
- e. What specific enforcement actions NBN Co has engaged in with respect to pay and conditions for your subcontractors (including those engaged by Primes)***

In any tender process with NBN Co, including for the Unify Services contract, Service Stream and NBN Co expend considerable time negotiating and revising applicable contract rates. Input is received from Service Stream's subcontractors in the development of its rate card with NBN Co to ensure that all appropriate activities and site circumstances are appropriately considered. Aside from this input, there are no specific contractual requirements on the rates to be paid to Service Stream's subcontractors (we would consider this to be a matter for Service Stream and its subcontractors).

Service Stream's Unify Services Contract with NBN Co includes broad audit rights in favour of NBN Co (relating to HSE, compliance, subcontracts, pricing etc) and there is a requirement for Service Stream to provide a statutory declaration that all subcontractors have been paid all moneys due and payable to them by our business. NBN Co is also entitled under the contract to any information about Service Stream's subcontractors including our subcontract terms and pricing.

The Unify Services contract also specifies that Service Stream must include in its subcontract provisions relating to compliance with HSE Management Systems, subcontractors co-operating with NBN Co in the undertaking of audits (audits on Service Stream and/or the subcontractor) and the notification of HSE incidents.

There have been no specific enforcement actions against Service Stream by NBN Co in relation the "pay and conditions of our subcontractors". Service Stream has a very positive relationship with its subcontractor workforce and prides itself on having longstanding and commercially beneficial relationships with these companies.

6. *If subcontractors refuse tasks allocated to them, is this recorded in any way, and does a record of refusing tasks influence the allocation of future tasks?*

There is a complex matrix of activity, skillsets and availability that forms the basis of the scheduling process. The role of the Work Optimisation Centre is to ensure the optimisation of allocation and work completion. Work is allocated and reallocated each day to manage the changing availability of the workforce. There is no record retained of these movements, nor does the scheduling engine understand the historic on the day management of these tasks.

7. *Where a task is allocated directly by NBN Co to a technician by the ServiceMax app, do you still take a margin of that rate of pay?*

a. *If yes, how does the margin compare to what you would take if you had been responsible for allocating the workflow?*

The mobilisation tool ServiceMax, which delivers the activity directly to Service Stream's subcontractors (in lieu of Service Stream directing the activity to its subcontractor), is only a small part of the overall process of managing the life cycle of a 'work order' from receipt through to completion and billing.

ServiceMax relates to activities that are known as 'Simplex' work orders (these activities typically include Activation & Assurance works). 'Complex' work orders (these activities include Remediation and Multi Dwelling Unit infrastructure works) require a more complex and

sophisticated process to manage the life cycle of a 'work order' and these are allocated directly to subcontractors by Service Stream through our own mobilisation tool.

Since the life cycle of a work order is the combination of multiple activities and processes, Service Stream claims payment for service from NBN Co based on the collective services provided. A margin is intended to be derived across all activities claimed from NBN Co, however due to the multiple activities and processes involved in supporting both Simplex and Complex work order we are not in a position to distinguish the margin between these activities.

- 8. The Committee heard evidence from numerous contractors that even with the enablement fee, their average pay is approximately \$2,000 per week. Prior to the enablement fee, their average pay was less than \$1,000 per week.**

That is before contractors have to pay their own costs including superannuation, paid leave, workers compensation, insurance, fuel, tolls, equipment, vehicle maintenance and training.

Is that consistent with your understanding of what its subcontractors earn? If not, what is the average pay for your subcontractors?

For the Unify Services contract during the period of March to August 2021, the average weekly earnings per subcontractor company was \$3,462.

- 9. Mr Mackender frequently stated that Service Stream's model is for its subcontractors to engage technicians as employees rather than as another layer of subcontractors. For example:**

"Our prime contractors have an employee model, so we don't have prime contractors that are contracting those services out to other specialists. It might be a slightly different model."

To clarify:

- a. Does Service Stream require in its procurement process that its Prime contractors are engaging technicians as employees rather than as subcontractors? If yes, how is this requirement expressed?**
- b. How does Service Stream enforce this requirement?**
- c. Has Service Stream ever discovered that a Prime was misrepresenting their workforce as being employees, when in reality they were engaged as subcontractors? If so, what was the outcome?**

We confirm that Service Stream's framework subcontract precludes subcontractors from subcontracting the works and services it is required to perform for Service Stream without prior written approval of Service Stream. Where subcontracting is permitted, it is generally where the relevant subcontractor requires the assistance of a specialist contractor to perform a specific task or service (e.g., asbestos removal).

All subcontractor employees/technicians are recorded in Service Stream's database for compliance and auditing purposes. Service Stream has not discovered any Unify Services subcontractors misrepresenting its workforce.

10. Have you ever rejected an application by an NBN technician to subcontract directly for your company, because they had not been released from their prior arrangement with a Prime? Or because doing so would incur a fee payable to a Prime?

Service Stream has not rejected any application by a subcontractor entity to be engaged directly with Service Stream to work on the Unify Services contract.