

# Humanitarian Settlement Program (HSP) Review of Subcontracting Arrangements

**Prepared for:**

Department of Social Services  
(Settlement Support Branch)

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**Synergy**



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# 1 Executive Summary

## 1.1 BACKGROUND

The Humanitarian Settlement Program (HSP) provides support to humanitarian entrants (clients) to build the skills and knowledge they need to become self-reliant and active members of the community.

The HSP is delivered on behalf of the Australian Government by five head providers in 11 contract regions across Australia, with <sup>s47G</sup>

HSP services are delivered to clients through a needs-based case management approach and may include:

- airport reception;
- on-arrival accommodation and property induction;
- provision of an initial food and essential items package;
- assistance to register with Centrelink, Medicare and a bank;
- addressing immediate health needs;
- instructions on what to do in an emergency situation and how to access interpreting services;
- orientation to local services; and/or
- other support services for long term settlement, education, employment and engagement.

## 1.2 SCOPE OF MANAGEMENT INITIATED REVIEW

The Settlement Support Branch engaged Synergy to conduct a management-initiated review (review) of HSP subcontracting arrangements. The review was revised to focus on <sup>s47G</sup>

The scope of the review focused on two key areas:

1. Assess and report to DSS on each of <sup>s47G</sup> approved subcontractors' total cost of delivering the HSP in comparison to the total amount they each receive for delivering the HSP; noting that representations had been made to DSS from <sup>s47G</sup> and their subcontractors that their total HSP delivery costs outweighed the amount received for their delivery of the HSP, which presented a risk to HSP service delivery; and
2. Review compliance with selected clauses in the HSP contract between <sup>s47G</sup> and DSS in relation to <sup>s47G</sup> HSP services subcontracts.

The review covered the six-month period between 1 July 2018 and 31 December 2018. During the period of review, <sup>s47G</sup> and their subcontractors provided HSP services to the value of <sup>s47G</sup> of which <sup>s47G</sup> paid approximately <sup>s47G</sup> to subcontractors for the delivery of HSP services.

<sup>s47G</sup> Payments report 1 July 2018 to 31 December 2018, extracted from the HSP system

In conducting our work, we have relied on the validity, accuracy and completeness of all information provided to us by s47G and their subcontractors.

Refer to Appendix A for the review scope and procedures.

### 1.3 SUMMARY OF REVIEW OUTCOMES

The outcomes against the review scope is summarised below.

Scope Area	Outcome
Total cost of HSP delivery, for each s47G approved subcontractor, compared to amounts received	<p>Several methods were used to compare the cost of providing HSP services to the amounts received. While there are limitations with regards to completeness and confidence in the data provided, based on this analysis it is reasonable for DSS to conclude that the cost of providing HSP services exceeds the amount received by the subcontractors. Service level analysis of five HSP Services (F05, I10, F02, I04, and G03), indicated that the key drivers behind this shortfall are F05 - <i>Coordinated and supported the Client to attend health appointments</i> and G03 - <i>Exit interview and finalises Case Management Plan</i>.</p> <p>The analysis is detailed in Section 2.</p>
s47G service subcontracts' compliance with selected HSP contract provisions	<p>From our review of the s47G subcontracts, it was evident that s47G lacks rigour in their contract management practices, with several clauses from the DSS/s47G head provider contract being duplicated without appropriately reflecting the subcontracting arrangement.</p> <p>The DSS/s47G head provider contract also specifies insurance coverage requirements in clause 13.9 (b) (v) (C) and our review identified several instances where these requirements are not being met by subcontractors.</p> <p>Several exceptions, as listed in 1.4 and section 3 of the report show that improvements are required in s47G contract management practices. Notwithstanding these, s47G complies with the following contract provisions reviewed:</p> <ul style="list-style-type: none"> <li>• There was evidence that s47G had requested approval from DSS in writing prior to entering subcontracting arrangements;</li> <li>• Payment terms in s47G subcontracts are substantially similar to the payment terms between DSS and s47G and</li> <li>• Payments are being made by s47G to subcontractors in line with agreed payment terms.</li> </ul> <p>Refer Appendix B for detailed results from our compliance review of s47G subcontracting arrangements.</p>

## 1.4 SUMMARY OF EXCEPTIONS AND OTHER OBSERVATIONS

The following are exceptions or other observations made during the review. DSS would benefit from implementing changes to the program to address these observations.

1. Improvement opportunities for s47G contract development and management processes. Eight detailed observations (refer section 3.1) detail the contract provisions that have not been fully complied with or could be improved in the subcontracting arrangements.
2. As a management control to mitigate service delivery risks, DSS has the contractual right to approve all subcontractors for head providers under clause 13.1 in the head provider contract. Clause 13.9 (Terms of Subcontract) has also been included in the head provider contract to place the onus of managing subcontractors' service delivery risk on the head provider. However, as DSS currently approves subcontractors the service delivery risk remains with DSS if subcontractors do not supply services in line with their contracts. DSS should either strengthen current approval processes to mitigate this risk, or alternatively, seek appropriate legal advice on whether the requirement for DSS to approve subcontractors can be removed.
3. s47G and subcontractor HSP financial management processes should be more robust. While detailed financial information was requested from all s47G subcontractors, only s47G were able to provide the financial information required. Of these s47G the detail and quality of this financial information varied considerably.
4. The records kept by DSS in relation to the approved subcontractors was incomplete at the time of the review.

## 1.5 SUMMARY OF RECOMMENDATIONS

	Reference	Synergy Recommendation
		s47G subcontractor HSP Services financial analysis
1	2.1	DSS to review the pricing of any services where s47G is significantly under-priced compared to the other head providers.
		s47G contract development and monitoring processes
2	3.1.1	DSS to collaborate with s47G to develop a suitable template which is tailored for subcontractors and ensure clauses correctly refer to s47G the Department or both. The tailored subcontract template should be utilised by subcontractors upon expiry of current subcontracts and for all new subcontracts.
3	3.1.2	DSS to request that s47G update the subcontractors' contracts immediately to remediate:

		<ul style="list-style-type: none"> <li>the ability of subcontractors to subcontract;</li> <li>Clauses 58.2 (vi) and 58.2 (vii) to ensure that it is clear on the allowable number of Service failures by subcontractors which will give rise to termination/reduction;</li> <li>The inclusion of the right of termination and Power of Attorney for DSS; and</li> <li>Any clauses which incorrectly refer to §47G where it should be §47G and the Department.</li> </ul>
4	3.1.3	DSS to request that §47G implement processes to monitor that subcontractors are compliant with clause 37.1 (b) and have in place any insurances (in addition to those stipulated in item 7, Schedule 1 of the subcontracts) required by Law in the jurisdiction in which the subcontractor is carrying out activities for the HSP program.
<b>Obligations and risks of parties under the current HSP service delivery model</b>		
5	3.2.1	<p>DSS to either:</p> <ul style="list-style-type: none"> <li>remove the contract requirement to directly approve subcontractors, after obtaining legal advice; or</li> <li>strengthen existing DSS approval process through implementing the draft HSP subcontractor approval form and operational instructions to assist DSS staff when approving subcontractors.</li> </ul>
<b>§47G and subcontractors' HSP financial management processes - improvement opportunities</b>		
6	3.3.1	DSS to provide feedback to §47G that as part of their accounts payable processes, they could validate HSP services listed in subcontractor invoices against the §47G as a control to prevent incorrect payment of claims.
7	3.3.2	DSS to consider revising or extending the requirement included in clause 54.1 (b) in the DSS/§47G head provider contract, whereby §47G must require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by DSS under this contract to be determined. This revision should place the onus on subcontractors to regularly track and report to §47G on the cost of delivering HSP services and would necessitate the implementation of an appropriate financial reporting structure to capture financial information relating to the HSP program.

8	3.3.3	DSS to consider mandating that relevant supporting documentation is attached to claims made in the HSP System in accordance with best practice to minimise the risk of incorrect claim payments.
9	3.3.4	DSS to undertake regular independent sample checking of subcontractor claims against supporting documentation to verify the accuracy of amounts claimed and the validity of services delivered.
<b>Other opportunities to improve HSP program administration</b>		
10	3.4.1	DSS to strengthen the existing processes to ensure that the Settlement Support Branch is informed of all changes to subcontracting arrangements, to assist DSS staff in maintaining a current list of approved HSP Subcontractors on the HSP SharePoint site.

## 2 <sup>s47G</sup> subcontractor HSP Services Financial Analysis

### BACKGROUND

During the period of review (1 July 2018 to 31 December 2018) <sup>s47G</sup> and their subcontractors provided HSP services to the value of <sup>s47G</sup> of which <sup>s47G</sup> paid approximately <sup>s47G</sup> to subcontractors for delivery of HSP services.

<sup>s47G</sup> and its subcontractors had provided feedback to DSS in their six-monthly report during this period that the current pricing model does not adequately compensate service providers for actual work undertaken, particularly for Specialised and Intensive Services (SIS) clients due to:

- scheduling / rescheduling of appointments;
- advocating for clients to receive appropriate and timely services;
- coaching/encouraging clients to access/engage with mainstream services;
- case conferencing with service providers; and
- additional work organising for regional clients to attend specialist appointments in <sup>s47G</sup>

During our review, Synergy also noted that several <sup>s47G</sup> subcontractors <sup>s47G</sup> were experiencing financial difficulty as a result of delivering HSP Services, which translated to a reduced scope of service delivery by <sup>s47G</sup>.

Synergy's review assessed feedback provided by <sup>s47G</sup> and its subcontractors regarding the financial viability of delivering HSP services through reviewing service provider pricing and financial information and analysis provided by subcontractors.

To enable comparison across subcontractors, our analysis has focussed on the following five HSP Service types selected by DSS (with the cumulative amount paid for these service types representing over 50% of the total HSP payments (after excluding Basic Household Goods (BHG) payments) made by DSS to <sup>s47G</sup> in the period under review):

- F05 - Coordinated and supported the Client to attend health appointments
- I10 - Initial Accommodation Support costs
- F02 - Accommodation with a lease of at least six months
- I04 - Met the Group at the airport
- G03 - Exit interview and finalises Case Management Plan

<sup>s47G</sup> Payments report 1 July 2018 to 31 December 2018, extracted from the HSP system

## ANALYSIS

Synergy requested information from <sup>s4</sup>/<sub>7G</sub> subcontractors and received HSP profit and loss information from <sup>s4</sup>/<sub>7G</sub> subcontractors. A confidence rating was assigned to each of these subcontractors regarding the quality, completeness and reliability of the data used to represent their financial performance in relation to the HSP program. Our confidence rating is based on the following criteria:

- The timeliness and completeness of financial information provided, which is indicative of regular financial tracking and reporting processes in the organisation.
- The level of sophistication and quality (at face value) of the financial information provided.
- Reasonableness of the subcontractors' represented profit/loss position for the HSP program for the period under review (1 July 2018 to 31 December 2018).
- Other relevant information noted from Synergy's research during the review.

A confidence rating of 1 to 3 has been assigned to subcontractors in Table 1 below, (**1** = criteria is largely met; **2** = some of the criteria has been met; **3** = minimal criteria has been met).

s47G



s47G



\* No financial data was received from s47G within review timeframes. s47G were excluded from the analysis as they did not receive any HSP payments during the period 1 July 2018 to 31 December 2018.

Table 1 above shows the profit and loss information of subcontractors. s47G



The following analysis conducted by Synergy on the five HSP Service types selected by DSS provides some insight into the underlying cause of these losses.

## 1. Comparison of <sup>s47G</sup> pricing to the other head providers

Of the five HSP Service types analysed<sup>3</sup>, Synergy identified that for:

- HSP service types, F05 and I10, <sup>s47G</sup> had the lowest average price (across bands/tiers) in comparison to other head providers (refer Figure 1 and Figure 2).
- HSP service type F02, <sup>s47G</sup> average price (across bands) was lower than two other head providers, and <sup>s47G</sup> and <sup>s47G</sup> had the lowest price for the top band (F02 Band 6) out of all providers.
- HSP service type G03, <sup>s47G</sup> and <sup>s47G</sup> had the lowest average price (across tiers) out of all providers.
- HSP service type I04, <sup>s47G</sup> average price (across bands) was lower than two other head providers.

<sup>s47G</sup>



<sup>3</sup> Noting that the regions serviced by each head provider vary and may account for some of the variation.

## 2. Analysis of §47G price margin on subcontractors for the five HSP Service types

Synergy calculated the average §47G price, average subcontractor price and average §47G price margin for each of the five HSP services types across all tiers/bands based on the service contracts (refer Table 2 and Figure 3). During our payments sample testing, Synergy verified §47G price margin by comparing the amount for these services from the DSS Payments report (amount paid to §47G to subcontractor invoice schedules (amount paid to subcontractors).

Table 2 - §47G

§47G

A large rectangular area of the document is completely redacted with a solid grey fill, obscuring the content of Table 2.

Figure 3 - §47G

§47G



### 3. HSP Service Level Analysis

Only s47G subcontractors were able to provide data at HSP service level and as such, there was insufficient data to provide a definitive view on which services types are loss making for the subcontractors. However, the data provided suggests that HSP Service types F05 and G03 are currently loss making for subcontractors (refer Table 3 below). Furthermore, F05 was the most voluminous of the five services undertaken by subcontractors, therefore compounding the impact of the losses they make on this service (refer Table 4).

**Table 3 Profitability of F05 and G03 HSP Services**

s47G

\*Note: expenses shaded in blue were derived using the following formula:  $(\text{HSP Service (F05 or G03) Revenue} / \text{Total HSP Program Revenue}) \times \text{Total HSP Program Expenses} = \text{HSP Service (F05 or G03) Expenses}$ . This conservative calculation was required as these details were not supplied by the subcontractors.

\*\* Note: revenue shaded in green has been derived using pricing in Services contracts s47G multiplied by the number of HSP services provided by the subcontractor.

## ASSESSMENT OF FINANCIAL VIABILITY OF DELIVERING HSP SERVICES

The analysis above demonstrates that §47G has likely under-priced at least two of the five HSP service types, F05 (Co-ordinated and supported the Client to attend health appointments) and I10 (Initial Accommodation Support costs), compared to the other head providers in the HSP program. Under-pricing by §47G translates through to losses for the subcontractors. In particular, the loss per service incurred on F05 is a driver of overall subcontractor losses due to the high volume of occurrences of this service type (refer Table 4).

Table 4 Driver of subcontractor losses

§47G



## RECOMMENDATION

- 2.1 DSS to review the pricing of any services where §47G is significantly under-priced compared to the other head providers.

## 3 Observations and recommendations

### 3.1 s47G contract development and monitoring processes

#### Observation

s47G has written contracts with all s47G subcontractors and is responsible for governance and management of HSP Services with designated contract management personnel to manage these arrangements. Synergy noted the following opportunities for improvement in relation to s47G contract development and monitoring processes:

1. The DSS/s47G head provider contract has been used as a template for all the subcontracts, and not tailored to subcontractors, which may result in misunderstandings or potential disputes. Examples where such issues may arise include:
  - Clause 13 (Subcontracting) being included in its entirety and additional subcontracting clauses included throughout the contract implying that s47G subcontractors can enter subcontracting arrangements.
  - Some typographical errors across subcontracts.
  - Part omission of insurance clause in some subcontracts.
  - Incorrectly stating that s47G will issue Recipient Created Tax Invoices to subcontractors (as DSS does to s47G)
  - Inconsistent referencing to s47G and the Department between subcontracts in some clauses, e.g., clause 29,5 refers to Ownership of Department Data in some subcontracts and Ownership of s47G and Department Data in others.
2. In all s47G subcontracts, clauses relating to Service failures (Clauses 58.2 (vi) and 58.2 (vii)) are not as prescriptive as the DSS/s47G head provider contract with regard to the number of Service failure points and Severe Service Failures, which will give rise to termination of the contract for default.
3. Subcontractors s47G have a shorter timeframe after the end of each month (3 business days) compared to s47G (5 business days) within which to enter claims into the HSP system to ensure claims are payable that month. Having a shorter HSP system input timeframe may disadvantage subcontractors on a month to month basis (with regard to managing their cash-flow).

4. Synergy noted that DSS only has an indirect right to terminate subcontractors via the head provider, and the §47G subcontracts do not contain a specific clause considering DSS's right of revocation of approval of subcontractors as is required in the DSS/§47G head provider contract clause 13.9 (b) (i).
5. Subcontracts do not grant Power of Attorney to DSS to novate the subcontract as is required in clause 13.9 (b) (iii) of the DSS/§47G head provider contract.
6. Several issues exist in insurance coverage across the subcontractors. Examples included:
  - §47G subcontracts have omitted this clause s 37.1 (c) (iii), related to insurance coverage;
  - There are several non-compliances noted across the subcontractors with regards to Professional Indemnity and Public Liability;
  - §47G do not have a mechanism to monitor any additional subcontractor insurance requirements that are required by Law in their jurisdiction.
7. Synergy noted that some clauses in the §47G subcontracts refer only to §47G rather than both §47G and the Department, which may give rise to potential reputational, business, security or legal issues, such as:
  - §47G ability to approve subcontractors receiving other payments from clients in relation to HSP Services;
  - A reference to §47G Security policies in relation to use of the HSP System rather than the Department's Security Policies;
  - Reporting of IT Security breaches (of the HSP System) to §47G rather than to both §47G and the Department;
  - Where subcontractors want to use third party systems that interface with the HSP System they need only ensure that the third-party system meets the minimum requirements of §47G and not those of DSS for entry into the HSP System;
  - Stating that client records are the property of §47G rather than DSS;
  - Incorrect references to §47G Guidelines rather than "The Guidelines" (of the Department) in handling client records;
  - Subcontractors are only obligated to report Work Health and Safety (WHS) breaches to §47G under clause 48; and
  - Subcontractors are only obligated to report conflicts of interest in performing services to §47G under clause 49; and
  - The Department does not have a direct right to conduct audits and access the subcontractors' records in relation to providing HSP services.

Refer to Appendix B for detailed subcontract clause compliance testing.

## Recommendations

Synergy recommends that DSS:

- 3.1.1 Collaborates with s47G to develop a suitable template which is tailored for subcontractors and ensure clauses correctly refer to s47G the Department or both. The tailored subcontract template should be utilised by subcontractors upon expiry of current subcontracts and for all new subcontracts.
- 3.1.2 Request that s47G update the subcontractors' contracts immediately to remediate:
  - the ability of subcontractors to subcontract;
  - Clauses 58.2 (vi) and 58.2 (vii) to ensure that it is clear on the allowable number of Service failures by subcontractors which will give rise to termination/reduction;
  - The inclusion of the right of termination and Power of Attorney for DSS; and
  - Any clauses which incorrectly refer to s47G where it should be s47G and the Department.
- 3.1.3 DSS to request that s47G implement processes to monitor that subcontractors are compliant with clause 37.1 (b) and have in place any insurances (in addition to those stipulated in item 7, Schedule 1 of the subcontracts) required by Law in the jurisdiction in which the subcontractor is carrying out activities for the HSP program.

### 3.2 Obligations and risks of parties under the current HSP service delivery model

#### Observation

The results of the contract testing as outlined above in section 3.1 shows that contract management practices in s47G lack rigor. However, because DSS approves subcontractors, DSS also needs to determine an appropriate risk appetite for service delivery certainty and contract management. There are areas where DSS has implemented controls to manage service delivery risks, through contract clauses such as clause 13 on subcontracting and the requirement for DSS to approve subcontractors. However, as DSS currently approves subcontractors the service delivery risk remains with DSS if subcontractors do not supply services in line with their contracts. An alternative approach for DSS would be to consider (with appropriate legal advice) removing the requirement for DSS to approve subcontractors.

The primary example of this is that head providers are required to obtain written approval from DSS prior to engaging any subcontractors. Synergy identified that email correspondence from s47G to DSS requesting approval for s47G subcontractors did not contain evidence to assure DSS that the subcontractors met the requirements stipulated in clause 11.3 (Service Provider Performance Related Warranties) in the subcontracts, which include:

- a. satisfactory police checks;
- b. demonstration of necessary skills and experience;
- c. possession of appropriate licences;
- d. permits, approvals and insurances to perform the services;
- e. fit and proper person checks of subcontractor personnel performing the services;
- f. checks that subcontractor personnel are not prohibited persons under the child protection legislation; and
- g. financial viability to perform the services.

Synergy noted that the HSP Policy section has drafted a HSP Subcontractor approval form (addressing clause 11.3 requirements) for head providers to complete, along with operational instructions for DSS staff in assessing applications to approve a subcontractor, however, at the time of this report, the form had not been mandated.

## Recommendations

Synergy recommends that:

3.2.1 DSS either:

- remove the requirement to directly approve subcontractors, after obtaining legal advice; or
- strengthen existing DSS approval process through implementing the draft HSP subcontractor approval form and operational instructions to assist DSS staff when approving subcontractors.

### 3.3 s47G and subcontractors' HSP financial management processes – improvement opportunities

#### Observation

Synergy noted the following two areas where s47G financial management processes in relation to subcontractors could be improved.

1. Under s47G current HSP claims process, all HSP claims (other than F04 Basic Household Goods) are entered directly into the HSP System by s47G subcontractors. Claim monies are then paid by the Department directly to s47G who subsequently pay subcontractors after receiving a Tax invoice from subcontractors (based on the HSP service rates as per the subcontracts).

Synergy observed that whilst there is functionality in the HSP System to attach supporting evidence for claims made by subcontractors in the HSP System, it is not a mandatory requirement. This places reliance on s47G to validate that services have actually been delivered by subcontractors prior to payment of claim monies as is represented in s47G business plan.

Our sample testing of s47G subcontractor invoice payments could not evidence validation of service delivery prior to payment.

s47G has advised that subcontractors are required to record evidence of service provision against the s47G however, Synergy has not assessed the records of the s47G to verify the accuracy of those records, within the scope of this review.

2. Synergy observed that of the s47G subcontractors approached for financial information regarding the cost of delivering HSP services, s47G subcontractors s47G were able to provide complete information in a timely manner. In order to monitor the financial performance of the HSP program, information such as HSP profit and loss statements for the period 1 July 2018 to 31 December 2018, annual/monthly budgets and actual vs budget variances should be readily available to and utilised by subcontractors as financial controls to monitor the cost of and revenue from delivering HSP Services.

## Recommendation

Synergy recommends that DSS:

- 3.3.1 Provide feedback to <sup>s47G</sup> that as part of their accounts payable processes, they could validate HSP services listed in subcontractor invoices against the <sup>s47G</sup> as a control to prevent incorrect payment of claims.
- 3.3.2 Consider revising or extending the requirement included in clause 54.1 (b) in the DSS/<sup>s47G</sup> head provider contract, whereby <sup>s47G</sup> must require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by DSS under this contract to be determined. This revision should place the onus on subcontractors to regularly track and report to <sup>s47G</sup> on the cost of delivering HSP services and would necessitate the implementation of an appropriate financial reporting structure to capture financial information relating to the HSP program.
- 3.3.3 Consider mandating that relevant supporting documentation is attached to claims made in the HSP System in accordance with best practice to minimise the risk of incorrect claim payments.
- 3.3.4 Undertake regular independent sample checking of subcontractor claims against supporting documentation to verify the accuracy of amounts claimed and the validity of services delivered.

### 3.4 Other opportunities to improve HSP program administration

#### Observation

Synergy noted that there is currently no centralised process to update the DSS list of approved HSP subcontractors located in the HSP SharePoint site. This SharePoint site included proposed subcontractors included in <sup>s47G</sup> original tender documents and was not updated after <sup>s47G</sup> subcontracting arrangements did not proceed. Additionally, when FAMs (Funding Arrangement Managers) from DSS State Offices approve subcontractors, the Settlement Support Branch are generally not notified. Consequently, the currency of the list of approved HSP subcontractors located in the HSP SharePoint site cannot be guaranteed.

To demonstrate appropriate oversight of the HSP, DSS should maintain a list of approved HSP subcontractors. This will support the timely delivery of this information to users/ stakeholders (for example, the Minister's Office or Parliamentary Committees) where required.

#### Recommendation

Synergy recommends that DSS:

- 3.4.1 Strengthen the existing processes to ensure that the Settlement Support Branch is informed of all changes to subcontracting arrangements, to assist DSS staff in maintaining a current list of approved HSP subcontractors on the HSP SharePoint site.

## Appendix A: Management Initiated Review (review) - scope and procedures

### Scope:

The review covered the period from 1 July 2018 to 31 December 2018 and included a review of:

- ▶ s47G compliance with the subcontracting requirements stipulated in their HSP contract with DSS;
- ▶ s47G compliance with their HSP contract requirements relating to the payment of subcontractor claims, payment timeframes, and insurance requirements;
- ▶ s47G subcontracts for inclusion of relevant clauses<sup>5</sup>, as required by their HSP contract with DSS; and
- ▶ s47G subcontractor's financial analysis for each approved subcontractor:
  - compare the total cost to deliver HSP services to the amount received from s47G for the period 1 July 2018 to 31 December 2018.
  - conduct targeted testing of five<sup>6</sup> HSP service types provided by s47G subcontractors and compare the total cost to deliver each HSP service type to the amount received from s47G for the period 1 July 2018 to 31 December 2018.

▶ s47G [REDACTED]

<sup>5</sup> Clauses 13.3 (a), 13.4 (b), 13.5, 13.6, 13.9 (b) (vi), 13.9 (b) (vii), 13.9 (c), and 13.10 were excluded from this review as agreed with DSS.

<sup>6</sup> DSS selected service types F02, F05, G03, I04 and I10, with the cumulative amount paid for these service types representing over 50% of the total HSP payments made by DSS to s47G in the period under review.

s47G [REDACTED]

s47G



### Review methodology:

#### Planning and Familiarisation

- ▶ Conducted pre-planning and information gathering.
- ▶ Developed a detailed review test program that addresses the review objective and scope.

#### Fieldwork

- ▶ Reviewed relevant policies, procedures, guidelines and supporting documentation.
- ▶ Conducted walkthroughs of processes in the HSP Claims System.
- ▶ Obtained evidence of s47G compliance with requirements stipulated in s47G HSP contract with DSS (the Department) pertaining to the following clauses:
  - 13.1 No subcontracting without consent
  - 13.2 Limitation on permitted subcontractors
  - 13.7 Register of approved subcontractors
  - 13.3 (b) Approved subcontractor and termination thereof
  - 13.9 (a) The Service Provider must enter a written subcontract with each Approved Subcontractor.
- ▶ Terms of subcontract (clause 13.9) – reviewed s47G contracts with s47G approved subcontractors to determine compliance with this clause:
  - Developed a populated a detailed subcontract review spreadsheet (refer to Appendix B for observations from this review)
  - Discussed the results of the subcontract review with key staff from the Settlement Support Branch.
- ▶ Payment of Subcontractors (clause 13.8) - reviewed a sample of s47G payments to s47G subcontractors for HSP Service delivery claims to determine compliance with this clause (payment terms similar to the payment terms between DSS and s47G and evidence of a valid invoice)

s47G



- ▶ Insurance requirements (clause 13.9 (b) (v) (C)) – reviewed evidence that <sup>s47G</sup> approved subcontractors have and maintain insurances relevant to the performance of HSP Services at least to the same extent as <sup>s47G</sup> is required to be insured in their contract with DSS.
- ▶ Assess the total cost to deliver HSP services to the amount received from <sup>s47G</sup> for the period 1 July 2018 to 31 December 2018 and conduct targeted testing of five<sup>9</sup> HSP service types provided by <sup>s47G</sup> subcontractors and compare the total cost to deliver each HSP service type to the amount received from <sup>s47G</sup> for the period 1 July 2018 to 31 December 2018
  - Developed a document request for subcontractors and compiled information.
  - Researched and analysed historical financial information from subcontractors (where publicly available).
  - Analysed financial information provided by subcontractors.

#### Reporting

- ▶ Held a soft exit meeting with key stakeholders from Settlement Support Branch
- ▶ Prepared a draft report for the Settlement Support Branch.
- ▶ Prepared a comprehensive final report for the Settlement Support Branch.
- ▶ Issued an agreed final report.

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<sup>9</sup> DSS selected service types F02, F05, G03, I04 and I10, with the cumulative amount paid for these service types representing over 50% of the total HSP payments (after excluding Basic Household Goods (BHG)) made by DSS to <sup>s47G</sup> in the period under review.

# Appendix B: Detailed Observations – compliance review of subcontracting arrangements §47G

Detailed results from our review of §47G contracts with §47G approved subcontractors to determine compliance with clause 13 of the DSS/§47G head provider contract are outlined below.

DSS/§47G Contract Clause	Testing results	Observation
<b>DSS head provider §47G - review of contract compliance</b>		
13.1 No subcontracting without consent	<ul style="list-style-type: none"> <li>• §47G obtained written approval from DSS for each of their §47G subcontractors.</li> </ul>	Observation 3.2
13.2 Limitation on permitted subcontractors	<ul style="list-style-type: none"> <li>• No §47G subcontractors were:               <ul style="list-style-type: none"> <li>○ listed as a terrorist under section 15 of the Charter of the United Nations Act 1945 (Cth).</li> <li>○ non-compliant with the Workplace Gender Equality Act 2012 (Cth).</li> </ul> </li> </ul>	
13.3(b) Approved subcontractor and termination thereof	<ul style="list-style-type: none"> <li>• §47G confirmed that no subcontractors had been terminated during the period 1 July 2018 - 31 December 2018, therefore subclause requirements were not tested.</li> </ul>	
13.7 Register of approved subcontractors	<ul style="list-style-type: none"> <li>• §47G provided a register of approved subcontractors which was found to include all §47G approved subcontractors.</li> </ul>	



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
13.9 (a) The Service Provider must enter into a written subcontract with each Approved Subcontractor.	<ul style="list-style-type: none"> <li>All <sup>s47G</sup> subcontractors had signed contracts.</li> </ul>	
<b>DSS head provider <sup>s47G</sup> – review of compliance with subcontracting requirements</b>		
13.8 Payment of subcontractors	<ul style="list-style-type: none"> <li>For the sample selected, all subcontractors were paid in accordance with the terms of the relevant subcontract. The payment terms (30 days after an invoice is issued by a subcontractor) were the same as the Departments terms of 30 days after issuing a recipient created tax invoice (RCTI).</li> <li>Clause 33.1 (c) (i) and 33.1 (c) (ii) in all <sup>s47G</sup> subcontracts refers to <sup>s47G</sup> issuing the subcontractor with an RCTI and making payment within 30 days after issuing the RCTI. If <sup>s47G</sup> do not issue RCTIs to subcontractors for payment of claims, these clauses should not be included in the contract.</li> <li>In all <sup>s47G</sup> subcontracts - Clause 33.4 (c) stipulates that “unless otherwise agreed in writing with <sup>s47G</sup> the Service Provider must not request, demand or receive any payment or any other consideration either directly or indirectly from any client or any person receiving FTS (Free Translating Services) Services for, or in connection with the Services”. There may be legal/reputational consequences where DSS does not directly approve subcontractors from requesting/demanding or receiving any other fees and charges from Clients in relation to Services provided under this contract.</li> </ul>	Observation 3.1



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<ul style="list-style-type: none"> <li>In all <sup>s47G</sup> subcontracts - Clause 33.7 (b) (i) suggests that <sup>s47G</sup> solely has discretion to make a payment of service charges to the subcontractor where the subcontractor is also receiving funding for similar services from other Commonwealth sources, or state, territory or local governments. DSS should also be made aware of decisions to pay subcontractors for services for which they are also receiving funding for similar services from other government sources.</li> <li>There is a typographical error in <sup>s47G</sup> subcontracts in relation to clause 33.5 (h) being split into two clauses (h and i).</li> </ul>	
<p>13.9 (b)(i) - the written subcontract includes a right of termination to take account of the Department's right of termination under clauses 58.1 and 58.2 and the Department's right of revocation of approval of a Subcontractor under clause 13.5.</p>	<ul style="list-style-type: none"> <li>Clause 58.1 allows <sup>s47G</sup> to terminate their subcontractors or reduce the scope of the contract through notifying the subcontractor in writing. However, DSS does not have a direct right of termination.</li> <li>In the event of a termination <sup>s47G</sup> is only liable to pay for subcontractor claims entered into the HSP System within 3 business days after month end for <sup>s47G</sup> subcontractors, with <sup>s47G</sup> subcontractor <sup>s47G</sup> having 5 business days.</li> <li>Clause 58.2 (Termination and reduction for default) in all <sup>s47G</sup> subcontracts provides <sup>s47G</sup> with the right to terminate the subcontract in the event of a default, and DSS does not have a direct right of termination.</li> <li>In all <sup>s47G</sup> subcontracts, Clauses 58.2 (vi) and 58.2 (vii) are not as prescriptive as the DSS/<sup>s47G</sup> head provider contract with regard to the number of Service failure points and Severe Service Failures which will give rise to</li> </ul>	<p>Observation 3.1</p>



DSS/§47G Contract Clause	Testing results	Observation
	<p>termination of the contract for default as is the case in the corresponding subclauses 58.2 (v) and 58.2 (vi) within the DSS/§47G head provider contract.</p> <ul style="list-style-type: none"> <li>• All §47G subcontracts do not explicitly contain a specific clause that takes account of the Department’s right of revocation of approval of the approved subcontractors. The subcontracts contain an identical clause 13.5 with reference to §47G right of revocation of approved subcontractors of their subcontractors, which does not satisfy the requirements of 13.9 (b) (i) of the DSS/§47G head provider contract.</li> <li>• In all §47G subcontracts, Clause 11.5 (b), Notification of complaints in the subcontracts, only refers to §47G taking necessary reasonable action as is necessary to protect §47G in the event of a complaint, including suspension of the Service Provider's engagement to provide the Services and/or termination of this contract under clause 58.2, giving rise to potential reputational/legal issues for DSS.</li> <li>• Clause 11.2 (referred to in Clause 58) - Service Provider Warranties. All §47G subcontracts refer to the correct material provision. The intent of clause 11.2 in both the DSS/§47G head provider contract and all §47G subcontracts are the same, however, the review recommends referring to both §47G and the Department in relation to 11.2(g) as any insurances held by the subcontractor have to cover both the Department and §47G in the event of loss/damage. This contradicts clause 37.1 (c) which stipulates that other than professional indemnity insurance, the subcontractor must ensure that</li> </ul>	



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<p>all subcontracts name the Department and its Personnel as additional insured persons.'</p> <ul style="list-style-type: none"> <li>• Clause 21.2 (referred to in Clause 58) - Working with Vulnerable Persons - The intent of clause 21.2 in both the DSS/<sup>s47G</sup> head provider contract and all <sup>s47G</sup> subcontracts are the same. The department might consider a revision of Clause 21.2 (g) in the subcontracts to make reference to both <sup>s47G</sup> and the Department, to allow DSS to directly request evidence from the subcontractor with regard to compliance with the requirements of this clause.</li> </ul>	
<p>13.9 (b)(ii) the written subcontract includes a requirement that the Approved Subcontractor consents to a novation of the subcontract as required under clause 13.6;</p>	<ul style="list-style-type: none"> <li>• No issues noted. Under clause 64.4, all subcontracts stipulate that the subcontractors agree if directed by <sup>s47G</sup> to consent to a novation of the subcontract.</li> </ul>	
<p>13.9 (b)(iii) the written subcontract includes a requirement that the Approved Subcontractor grants a power of attorney in favour of the Department that allows the Department to execute such documents necessary to give effect to</p>	<ul style="list-style-type: none"> <li>• None of the subcontracts (in accordance with clause 13.9 (b) (iii)) included a clause which grants a Power of Attorney to DSS that allows them to execute such documents necessary to give effect to the novation of the subcontract. <sup>s47G</sup> have pointed to the corresponding clause 13.9 (b) (iii) in their subcontracts which grant Power of Attorney to <sup>s47G</sup> as satisfying this requirement, however the intention of clause 13 in the subcontract pertains to <sup>s47G</sup> subcontractors' subcontractors and not DSS.</li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
the novation of the subcontract;		
<p>13.9 (b)(iv) the written subcontract imposes obligations on the Approved Subcontractor equivalent to the obligations under:</p> <p>(A) clause 13.2; and</p> <p>(B) this clause 13.9(b).</p>	<ul style="list-style-type: none"> <li>• None of the subcontracts contained a specific clause which allows for termination of <sup>s47G</sup> subcontractors in the event that subcontractors are non-compliant with the Workplace Gender Equality Act 2012 (Cth) or listed as a terrorist under section 15 of the Charter of the United Nations Act 1945 (Cth), as per 13.2 in the DSS/<sup>s47G</sup> head provider contract.</li> <li>• Clause 13.9 (b) in the DSS/<sup>s47G</sup> head provider contract is included in its entirety in all <sup>s47G</sup> subcontracts. References to the Department in this clause (as per the DSS/<sup>s47G</sup> head provider contract) have been changed to <sup>s47G</sup> in the subcontracts. This may have legal or other implications particularly in relation to clause 13.1 which implies that <sup>s47G</sup> is able to approve subcontractors and does not explicitly state that DSS's approval is also required. Furthermore, if it is the case that <sup>s47G</sup> subcontractors are not allowed to contract further, the inclusion of the following clauses relating to subcontracting currently included within the subcontracts should also be reviewed for relevance: <ul style="list-style-type: none"> <li>- Clause 21.2 (h)</li> <li>- Clause 32.4</li> <li>- Clause 41.5</li> <li>- Clause 46 (e)</li> <li>- Clause 49.5</li> <li>- Clause 56.8</li> <li>- Clause 58.1 (c)</li> </ul> </li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
<p>13.9 (b) (v) (A) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with all applicable laws.</p>	<ul style="list-style-type: none"> <li>No issues noted. Clause 51.1 (a) in all subcontracts requires subcontractors to comply with all the same laws referred to under 51.1 (a) within the DSS/<sup>s47G</sup> head provider contract.</li> </ul>	
<p>13.9 (b) (v) (B) (I) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 12 (HSP System)</b></p>	<ul style="list-style-type: none"> <li>For all <sup>s47G</sup> subcontracts, consider revising Clause 12.3 (a) to state, ‘The Service Provider must ensure a client’s details are recorded in the HSP system as required by <sup>s47G</sup> and the Department’ (the current clause only refers to <sup>s47G</sup>)</li> <li>For all <sup>s47G</sup> subcontracts, clause 12.4(b) currently refers to <sup>s47G</sup> being able to notify subcontractors to use other operating systems from time to time. <sup>s47G</sup> should be precluded from setting system requirements for subcontractors unless the Department has also provided this advice (due to the risk of incompatibility with DSS system requirements). A revision of this clause in the subcontracts to make a reference to both <sup>s47G</sup> and the Department should be considered.</li> <li>In all <sup>s47G</sup> subcontracts – clauses 12.4 (c) to 12.4 (e) – Use of the HSP System relating to Access and Security in the subcontracts stipulate that the subcontractor only requires: <ul style="list-style-type: none"> <li><sup>s47G</sup> approval to use an alternate operating system (to that stipulated in the DSS/<sup>s47G</sup> head provider contract),</li> </ul> </li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<ul style="list-style-type: none"> <li>○ the subcontractor to advise <sup>s47G</sup> when using third party systems that interface with the HSP System and ensure that the third-party system meets the minimum requirements of <sup>s47G</sup> for entry into the HSP System, and</li> <li>○ the subcontractor to obtain technical advice from <sup>s47G</sup> on the HSP System.</li> </ul> <p>It is prudent that DSS provides approval in relation to the above, and a revision of these clauses in the subcontracts to make a reference to both <sup>s47G</sup> and the Department should be considered.</p> <ul style="list-style-type: none"> <li>● In all <sup>s47G</sup> subcontracts - clauses 12.4 (f) and 12.4 (h) only stipulate that the subcontractor and Third-Party IT providers must comply with <sup>s47G</sup> Security Policies. The DSS/<sup>s47G</sup> head provider contract refers to the Department's Security Policies in the corresponding clause. The Department's Security Policies are defined in the Glossary of both the DSS/<sup>s47G</sup> head provider contract and the subcontract however the subcontracts' Glossary does not contain a definition of the <sup>s47G</sup> Security policy. Clause 12.4 (f) in the subcontracts should refer to the Department's Security Policies and DSS should request that <sup>s47G</sup> consider revising this clause to reflect its original intent.</li> <li>● In all <sup>s47G</sup> subcontracts - clause 12.4 (g) only stipulates that <sup>s47G</sup> should have current details of the subcontractor's security contact. It is prudent that both <sup>s47G</sup> and DSS have these details in the event of an HSP System security incident and a revision of this clause in the subcontracts to make a reference to both <sup>s47G</sup> and the Department should be considered.</li> </ul>	



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<ul style="list-style-type: none"> <li data-bbox="622 309 1570 624">• In all <sup>s47G</sup> subcontracts – clause 12.4 (i) stipulates that the subcontractor must report all actual and suspected breaches of IT Security to <sup>s47G</sup>. Any breaches of IT security should also be reported to DSS as per section 9.4 (a) in the subcontracts’ Statement of Requirement which states that for all Critical Incidents relating to the HSP System, the Service Provider must notify <sup>s47G</sup> and the Department within 24 hours of the event (or knowledge of the event), or sooner depending on the severity of the incident. A reference to <sup>s47G</sup> in clause 12.4 (i) contradicts the intent of section 9.4 of in the Statement of Requirement.</li> <li data-bbox="622 667 1570 911">• In all <sup>s47G</sup> subcontracts - clauses 12.4 (j), 12.4 (k), 12.4 (l), and 12.4 (m) only refer to <sup>s47G</sup> suspending the subcontractor's access to the HSP system in the event of an IT Security breach, imposing conditions for resumptions of access where a suspension of access to the HSP system occurs, notifying the Service provider that access to the HSP System is suspended/terminated. A revision of this clause in the subcontracts to make a reference to both <sup>s47G</sup> and the Department should be considered.</li> <li data-bbox="622 954 1570 1161">• In all <sup>s47G</sup> subcontracts, there is an additional clause, 12.1 (e), which stipulates that failure by the subcontractor to comply with clause 21.1 (c) and (d) will result in termination of the subcontract. This clause refers incorrectly to clause 21.1 (c) instead of clause 12.1 (c). Clause 21.1 (c) relates to training of Volunteers which does not align with the substance of this clause.</li> </ul>	



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
<p>13.9 (b) (v) (B) (II) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 29 Intellectual Property Rights</b></p>	<ul style="list-style-type: none"> <li>• Whilst all <sup>s47G</sup> subcontracts consistently referred to both <sup>s47G</sup> Material and Department Material in clause 29.4, the definitions of <sup>s47G</sup> Material and Department Material in the Glossary of terms varied between subcontracts. In <sup>s47G</sup> subcontracts <sup>s47G</sup> Material is defined as material provided by <sup>s47G</sup> and Department Material is defined as material provided by the Department; in <sup>s47G</sup> subcontracts <sup>s47G</sup> and the Department's Material are defined as material provided by <sup>s47G</sup> and in <sup>s47G</sup> subcontracts <sup>s47G</sup> Material is defined to be material provided by <sup>s47G</sup> and Departmental Material is defined to be material provided by both <sup>s47G</sup> and the Department.</li> <li>• Clause 29.5 in the DSS/<sup>s47G</sup> head provider contract refers to Ownership of Department Data, whereas there is inconsistent reference to either Ownership of Department Data (<sup>s47G</sup> subcontracts) or Ownership of <sup>s47G</sup> and Department Data (<sup>s47G</sup> subcontracts). Furthermore, the glossary of terms in the subcontract include client records within both the definitions of Department Data and <sup>s47G</sup> Data, which contradicts clause 29.5 (a) in all subcontracts which stipulates that all Client records and recordings in whatever form, form part of Department Data.</li> <li>• Inconsistent references were noted amongst the subcontracts in clause 29.6 (a). <sup>s47G</sup> subcontracts state that the subcontractor must, if requested by the Department, bring into existence, sign, execute or deal with any documents which is necessary to give effect to clause 19 Intellectual property rights. <sup>s47G</sup> subcontracts refer to both <sup>s47G</sup> and the Department making this request.</li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<p>Inconsistent references in clause 29.7 (b) were noted which requires that on expiration or termination of the contract, the subcontractor delivers all Contract material and all <sup>s47G</sup> data and Department data that has not been entered into the system and deal with it as directed by: <sup>s47G</sup> subcontractors); <sup>s47G</sup> and the Department (<sup>s47G</sup> subcontracts) and only the Department (<sup>s47G</sup> subcontracts).</p> <ul style="list-style-type: none"> <li>• Clause 29.9 (Remedy for breach of warranty) - <sup>s47G</sup> subcontracts only refer to <i>'the Department reasonably believing'</i> that someone is likely to claim that all or part of the Warranted materials (subcontractor's pre-existing material, contract material or third party material) infringe their Intellectual Property rights (therefore requiring the subcontractor to secure rights to the Warranted Materials/ modify Warranted materials), whereas <sup>s47G</sup> subcontracts refer to <i>'both the Department and <sup>s47G</sup> reasonably believing'</i>.</li> </ul>	
<p>13.9 (b) (v) (B) (III) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 31 Client Records</b></p>	<ul style="list-style-type: none"> <li>• All <sup>s47G</sup> subcontracts state that client records are the property of <sup>s47G</sup> rather than the Department's under clause 31.1 (a). This contradicts clause 29.5 (a) in all subcontracts which stipulates that all client records and recordings in whatever form, form part of Department Data. Furthermore, the glossary of terms in the subcontract includes client records within both the definitions of Department Data and <sup>s47G</sup> Data, which also contradicts clause 29.5 (a).</li> <li>• All <sup>s47G</sup> subcontracts refer to <sup>s47G</sup> Guidelines under clauses 31.1 (b), 31.2 (c) (iii), 31.2 (d), 31.2 (e) and 31.2 (f) as guidance for storing, maintaining client</li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<p>records, transferring client records to third parties, retention of client records, managing client records and destruction of client records. The correct reference should be to "The Guidelines" which are the Department's guidelines.</p> <ul style="list-style-type: none"> <li>For all <sup>s47G</sup> subcontracts under clauses 31.1 (c), 31.2 (a) and 31.3 (d), the subcontractor must provide client records and make lists of client records available on request of <sup>s47G</sup> and comply with <sup>s47G</sup> directions for access to client records. There is no reference to the Department's ability to make this request and providing direction, despite client records being Department Data.</li> <li>All <sup>s47G</sup> subcontracts under clause 31.2 (c) (i), only refer to requiring <sup>s47G</sup> approval for transfer custody of client records. A revision of this clause in the subcontracts to make a reference to both <sup>s47G</sup> and the Department should be considered.</li> </ul>	
<p>13.9 (b) (v) (B) (IV) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 32 Protection of Department Data</b></p>	<ul style="list-style-type: none"> <li>Clauses 32.1 (a) to 32.1 (e) (Use of <sup>s47G</sup> Data) in all <sup>s47G</sup> subcontracts only refer to <sup>s47G</sup> Data in relation to: restricting the use of data for fulfilling obligations under the subcontracts; not allowing unauthorised persons to access/use data; not sell/let for hire/ assign rights to/ dispose of data; and not commercially exploiting data or altering data. A revision of this clause in the subcontracts to make reference to both <sup>s47G</sup> and the Department's data should be considered, as client records are also the property of the Department under clause 29.5 (a).</li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<ul style="list-style-type: none"> <li>• Clause 32.2 (b) (Safeguarding <sup>s47G</sup> Data) in all <sup>s47G</sup> subcontracts does not include a reference to Department Data. A revision of this clause in the subcontracts to make reference to both <sup>s47G</sup> and the Department's data should be considered.</li> <li>• Clause 32.5 in all <sup>s47G</sup> subcontracts requires the subcontractor to indemnify <sup>s47G</sup> for damages/losses arising from a breach of obligations in relation to protection of data. A revision of this clause in the subcontracts to make reference to both <sup>s47G</sup> and the Department should be considered.</li> </ul>	
<p>13.9 (b) (v) (B) (V) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with</p> <p><b>Clause 35 Disclosure</b></p>	<ul style="list-style-type: none"> <li>• No issues noted. Clause 35 is included in the subcontracts and the intention of the clause is the same between the DSS/<sup>s47G</sup> head provider contract and the subcontracts.</li> </ul>	
<p>13.9 (b) (v) (B) (VI) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with</p>	<ul style="list-style-type: none"> <li>• In all <sup>s47G</sup> subcontracts, there is a typographical error in clause 40.6 (a) with regard to a reference to item 1.19 of the Contract Details. Contract Details are included in Schedule 1 of the subcontract, however Confidentiality (Clause 40) is referred to in item 9 of the Contract Details, not item 1.19.</li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
<b>Clause 40 Confidentiality</b>		
<p>13.9 (b) (v) (B) (VII) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 41 Protection of Personal Information</b></p>	<ul style="list-style-type: none"> <li>• Clause 41.3 (c) (i) (B) in all <sup>s47G</sup> subcontracts require the subcontractor to develop and implement practices, procedures and systems to enable <sup>s47G</sup> to comply with the Australian Privacy Principles.</li> </ul> <p>Clause 41.3 (j) in all <sup>s47G</sup> subcontracts obligates the subcontractor to not store / disclose Personal information in relation to this contract outside Australia/allow parties outside Australia to have access to Personal information without written approval of <sup>s47G</sup></p> <ul style="list-style-type: none"> <li>• Clause 41.4 in all <sup>s47G</sup> subcontracts only refers to the subcontractor only notifying <sup>s47G</sup> in the event of a breach of obligations relating to the protection of personal information under clause 41.</li> </ul> <p>For all of the above clauses, a revision in the subcontracts to make reference to both <sup>s47G</sup> and the Department should be considered.</p>	Observation 3.1
<p>13.9 (b) (v) (B) (VIII) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p>	<ul style="list-style-type: none"> <li>• No issues noted. Clause 43 is included in the subcontracts, and the intention of the clause is the same between the DSS/<sup>s47G</sup> head provider contract and the subcontracts.</li> </ul>	



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
<b>Clause 43 Acknowledgement and Promotion</b>		
<p>13.9 (b) (v) (B) (IX) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 46 Freedom of Information</b></p>	<ul style="list-style-type: none"> <li>No issues noted. Clause 46 is included in the subcontracts, and the intention of the clause is the same between the DSS/<sup>s47G</sup> head provider contract and the subcontracts.</li> </ul>	
<p>13.9 (b) (v) (B) (X) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 47 Illegal Workers</b></p>	<ul style="list-style-type: none"> <li>Clauses 47 (d) and 47 (e) provide <sup>s47G</sup> with the right to request evidence from subcontractors to demonstrate compliance with obligations relating to Illegal Workers and also to demonstrate compliance within 5 business days. A revision in the subcontracts to make reference to both <sup>s47G</sup> and the Department should be considered.</li> </ul>	Observation 3.1
<p>13.9 (b) (v) (B) (XI) the terms of the written subcontract with the approved</p>	<ul style="list-style-type: none"> <li>Clause 48 (Work Health and Safety - WHS) only obligates subcontractors to: ensure that any act/omission under WHS Laws does not place <sup>s47G</sup> in breach of the WHS Laws, cooperate with <sup>s47G</sup> in relation to WHS</li> </ul>	Observation 3.1



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
<p>subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 48 Work Health and Safety</b></p>	<p>incidents, and familiarise, ensure compliance with <sup>s47G</sup> WHS policies and directions, and to notify <sup>s47G</sup> in relation to WHS incidents.</p> <ul style="list-style-type: none"> <li>In addition, <sup>s47G</sup> has the right to suspend, terminate or reduce the scope of the subcontracts if breaches are not rectified.</li> </ul> <p>As all <sup>s47G</sup> subcontracts only refer to <sup>s47G</sup> a revision in the subcontracts to make reference to both <sup>s47G</sup> and the Department should be considered.</p>	
<p>13.9 (b) (v) (B) (XII) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 49 Conflict of Interest</b></p>	<ul style="list-style-type: none"> <li>Clauses 49.2 (a), 49.2 (c) and 49.3 in all <sup>s47G</sup> subcontracts obligate subcontractors to notify <sup>s47G</sup> where a Conflict of Interest exists in performing services under the subcontracts. <sup>s47G</sup> also has the right to terminate the subcontract if a conflict of interest exists.</li> </ul> <p>As all <sup>s47G</sup> subcontracts only refer to <sup>s47G</sup> a revision in the subcontracts to make reference to both <sup>s47G</sup> and the Department should be considered.</p>	Observation 3.1
<p>13.9 (b) (v) (B) (XIII) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 50 Security</b></p>	<ul style="list-style-type: none"> <li>Clause 50.7 in all <sup>s47G</sup> subcontracts obligates subcontractors to notify <sup>s47G</sup> where there is a security breach and also allows <sup>s47G</sup> to terminate the subcontract in the event of a security breach.</li> <li>Clauses 50.2 (c) and 51.1 (e) only refer to <sup>s47G</sup> providing Commonwealth policies and guidelines and additional security requirements to the subcontractor, for the subcontractor to comply with.</li> </ul> <p>As all <sup>s47G</sup> subcontracts only refer to <sup>s47G</sup> a revision in the subcontracts to make reference to both <sup>s47G</sup> and the Department should be considered.</p>	Observation 3.1



DSS/ <sup>§47G</sup> Contract Clause	Testing results	Observation
<p>13.9 (b) (v) (B) (XIV) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 51 Compliance with policies and Laws</b></p>	<ul style="list-style-type: none"> <li>• Clauses 50.2 (c) and 51.1 (e) only refer to <sup>§47G</sup> providing Commonwealth policies and guidelines and additional security requirements to the subcontractor, for the subcontractor to comply with. A revision in the subcontracts to make reference to both <sup>§47G</sup> and the Department should be considered.</li> </ul>	<p>Observation 3.1</p>
<p>13.9 (b) (v) (B) (XV) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 53 Fraud</b></p>	<ul style="list-style-type: none"> <li>• Clauses 53 (b) and 53 (c) in all <sup>§47G</sup> subcontracts allows <sup>§47G</sup> to request copies of the subcontractors Fraud Control Plan and terminate subcontracts if the subcontractor has engaged in fraudulent activity. A revision in the subcontracts to make reference to both <sup>§47G</sup> and the Department should be considered.</li> </ul>	<p>Observation 3.1</p>
<p>13.9 (b) (v) (B) (XVI) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p>	<ul style="list-style-type: none"> <li>• No issues noted. Clause 54 is included in the subcontracts, and the intention of the clause is the same between the DSS/<sup>§47G</sup> head provider contract and the subcontracts.</li> </ul>	



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
<b>Clause 54 Books and Records</b>		
<p>13.9 (b) (v) (B) (XVII) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to comply with:</p> <p><b>Clause 56 Audit and Access</b></p>	<ul style="list-style-type: none"> <li>• Clause 56 in all <sup>s47G</sup> subcontracts Audit and Access currently only provides <sup>s47G</sup> with rights to conduct audits and access the subcontractors' records in relation to providing services under this contract. A revision in the subcontracts to make reference to both <sup>s47G</sup> and the Department should be considered.</li> </ul>	<p>Observation 3.1</p>
<p>13.9 (b) (v) (C) the terms of the written subcontract with the approved subcontractor includes a requirement for the approved subcontractor to have and maintain insurances relevant to the performance of the Services at least to the same extent as Service Provider is required to be insured under this contract.</p> <p><b>Maintenance of Insurance</b></p>	<ul style="list-style-type: none"> <li>• All subcontractors have workers compensation insurance as required in Item 7 (a) of Schedule 1 referred to in clause 37.1 (a).</li> <li>• Clause s 37.1 (c) (iii), included in the <sup>s47G</sup> DSS head provider contract, requires that Insurance policies specified in item 7 of Schedule 1 (Contract details), other than professional indemnity insurance name the Department and its personnel as additional insured persons. <sup>s47G</sup> out of <sup>s47G</sup> subcontracts have omitted this clause.</li> <li>• <sup>s47G</sup></li> <li>• <sup>s47G</sup></li> <li>• <sup>s47G</sup></li> </ul>	<p>Observation 3.1</p>



DSS/ <sup>s47G</sup> Contract Clause	Testing results	Observation
	<p>s47G [Redacted]</p> <ul style="list-style-type: none"> <li>• s47G [Redacted]</li> <li>• s47G [Redacted]</li> <li>• s47G [Redacted]</li> </ul>	

