

**Australian Government response
to the
Senate Education, Employment and Workplace
Relations References Committee's Report**

**The administration and purchasing of Disability
Employment Services in Australia**

February 2012

Introduction

1. The Senate referred the inquiry into the *administration and purchasing of Disability Employment Services in Australia* (the Inquiry) to the Senate Standing References Committee on Education, Employment and Workplace Relations (the Committee) on 22 August 2011.
2. The Committee report, *The administration and purchasing of Disability Employment Services in Australia* (the Report) was tabled on 25 November 2011.
3. The Committee majority made 11 recommendations regarding purchasing arrangements for the Disability Employment Services – Employment Support Services (DES-ESS) for 2013-2015.
4. Through submissions and hearings the Inquiry was able to document a range of views about a number of issues. There were some clear and divided opinions reflecting different interests in this area.
5. A number of DES employment service providers and their peak bodies expressed a preference not to have to go through a tender process at all or are seeking to limit the number of providers required to do so.
6. Other employment service providers that have been largely or entirely excluded from delivery under DES, and their peak employment service bodies, on the whole supported the decision to go to tender.
7. It is the view of the Australian Government that the interests of people with disability should be paramount in determining these matters. The Australian Federation of Disability Organisations and other disability consumer organisations such as MS Australia and the National Council on Intellectual Disability provided submissions supportive of the DES-ESS tender decision based on the interests of people with disability.
8. In addition the Department for Education Employment and Workplace Relations (the Department) put the view that the DES-ESS tender decision serves the public interest, as well as those of people with disability and employers.
9. In designing the new DES programs, it is relevant to note that there were extensive consultations, beginning in 2008. Furthermore, there were consultations undertaken in advance of the 2011–12 Budget decisions on DES procurement. Evidence contained within the Report largely reflected the positions known through those earlier consultative processes.
10. The Government recognises that the Committee has sought to strike compromises between competing service provider interests. However, in doing so it has given insufficient weight to the public interest and the interests of people with disability.
11. A competitive tender process primarily based on performance is the most promising mechanism for:
 - providing people with disability with access to the best possible employment service providers;
 - bringing about improvements in employment service provision for people with disability; and
 - ensuring value for money is achieved.

Recommendation 1

The committee recommends that the Department consider exploring alternative purchasing models for DES-ESS, especially in relation to the purchasing of specialist provider services.

Response

Not Supported.

The Government believes that people with disability and their employers deserve access to the best possible employment services. A competitive open tender is a tried and proven mechanism that has proven to give fair and balanced outcomes. A tender will result in the contracting of the best possible employment services so more people with disability in more places in Australia benefit. After this tender, the public will be able to have confidence that the best possible providers are delivering these services.

The Government acknowledges that competitive tender processes can involve some disruption to the market for participants and for employers. However, contracting the best providers will more than compensate for any short-term disruption that may occur during the transition and will deliver better outcomes for people with disability. Depending on the individual management of organisations, tendering can result in a temporary slow-down in performance over the tender period. However, there is evidence that the outcomes of a competitive tender have a positive effect on efficiency and the delivery of quality services to job seekers. For example, research by the Productivity Commission into the previous Job Network program showed that competition between providers and the use of outcome payments created strong incentives for providers to improve efficiency and find better ways of achieving job outcomes for job seekers.

The Government will work closely with providers and stakeholders to put in place a transition plan that minimises disruption for participants and employers. Services and support will continue. Where job seekers move to a new provider, services are likely to improve with providers that have demonstrated their performance through the tender process.

The Department has successfully managed changes in DES providers and the transition of job seekers on numerous occasions as part of regular business. In addition to the role of the Government and Department, providers have a role in providing clear and accurate information to job seekers or their families during any transitioning of the job seeker to another provider.

It is also acknowledged that there may be organisations within the industry, both providers currently delivering DES-ESS and other potential tenderers, that have limited experience in preparing and submitting a response to a tender for employment services. The Government will, therefore, be taking steps to ensure that organisations are as well-prepared as possible for the DES-ESS tender by developing a range of communication products to support the tender process.

Finally, the current arrangements in relation to both business share and direct registration of eligible job seekers provide flexibility in the way the system currently works to cater for some organisations to deliver services based on a very small business share.

Recommendation 2

The committee recommends that any purchasing process for DES-ESS, including competitive tendering, be delayed by a further 12 months to avoid unnecessarily disrupting service provision during a time of improving performance.

Response

Not supported.

Unlike DES – Disability Management Service (DES-DMS) and Job Services Australia (JSA) providers, DES-ESS providers were not required to demonstrate their capacity to deliver services through a competitive tender when the program was established. Existing providers of the program DES-ESS replaced were instead offered contracts, irrespective of performance.

As such, there was no opportunity in 2009 for new providers to enter the DES-ESS market. There was also no opportunity for existing providers to compete for additional DES-ESS business. At the time, the Government signalled its intention to run a competitive tender process for DES-ESS in the future. This decision was also taken in the context of significant stability for many providers that have received recurrent funding without being required to tender – in some cases, for many years.

Contract extensions are being offered to all DES-ESS providers until 3 March 2013 to allow providers a full two years to engage with the DES-ESS model prior to the collection of performance data to determine the tender. This will also extend the term of the current DES-ESS contract to three years in total. Furthermore, a longer than usual transition period has been allocated to support a sensitive and effective handover of participants and their employers.

The Government notes the concerns raised in the Committee's Report about the timing of the DES-ESS tender given that the Government is simultaneously implementing reforms to the Disability Support Pension (DSP). These measures are designed to increase the workforce participation of people on the DSP and will have limited impact on DES providers and no impact on the tendering process.

As the Department indicated in its submission to the Inquiry:

"the flexibility of the employment services model enables major government reforms to be incorporated. DES providers will be expected to deliver employment services and record information as per the current Deed and guidelines. Providers will not be involved in the assessment process nor be expected to develop specific reports for the DSP Assessor."

The concerns expressed by some providers that the changes will mean an increase in less motivated job seekers onto their caseload are overstated. The estimated additional 10,000 job seekers per year flowing into DES in 2011-12 and 2012-13 have similar characteristics to job seekers currently being assisted by DES providers and the increase will also occur across all providers and their sites over an extended period of time.

Recommendation 3

The committee recommends that the contract duration be extended from three to five-years. The contract should include a mid-point review to ensure that consistent poor performance is identified and addressed.

Response

Supported in principle.

The Government shares the views of the broader employment service and disability consumer sectors that the awarding of contracts should be primarily based on performance as assessed through a competitive tender process. The Government also recognises some merit in five year contracts in which the additional certainty could assist in establishing and growing a business; offering greater security to staff and stakeholders; and building relationships with employers, other local service providers and the community.

Five year contract periods do, however, present some risks. Foremost is the need to ensure that expenditure of Commonwealth funds is efficient, effective, economical and ethical, and represents value for money to the Commonwealth. To do this, there would need to be flexibility built into a longer contract to accommodate change without the need for a renegotiation, for example to cater for changes in economic conditions. Furthermore, there is a need to ensure continual levels of high performance over a five year period. Some of these issues would be addressed through a mid-term business reallocation process.

Employment services contracts are generally for periods of three years with provision for extensions. However, in practice, DEEWR has exercised this extension provision for most contracts, effectively making the contract periods much longer. As has been noted in the Department's submission, many current DES-ESS providers have been contracted for many years without the need to tender.

Under the current purchasing arrangements the Deeds of DES-DMS providers, who were subject to a tender process in 2009, will be extended by an additional three years, taking the entire period to five years and four months. For the first time, organisations that are not delivering sustainable jobs for participants will be subject to a business reallocation process during the DES-DMS contract extension period.

Recommendation 4

The committee recommends that the scale of the proposed tender be limited to service providers below the national star-rating median.

Response

Not Supported.

The Government's view is that people with disability deserve access to the best possible services. A tender process is an open and transparent way of ensuring that the best possible providers are delivering services to job seekers.

The Inquiry was presented with considerable evidence that a competitive tender process primarily based on performance will contribute to an improvement in service provision to people with disability.

Through the DES-ESS tender process, the Government will test whether there are other organisations able to deliver higher levels of servicing to job seekers than providers currently performing at average or low levels.

Setting the benchmark high for DES-ESS underscores the Government's commitment to quality services for people with disability, and means that job seekers, employers and the community at large can be confident that the best possible providers are delivering those services. It is simply not good enough to assume that average, or three-star performance, in a never-contested market represents quality service for people with disability.

Attempts to draw parallels between the DES-ESS tender arrangements and the arrangements for JSA (that is, the offer of contract extensions to JSA providers rated three stars and above), are unfounded. JSA was established in 2009 after a full, open tender process to test the market and this was a key consideration in designing the current JSA procurement arrangements. By contrast, all DES-ESS providers were offered contract rollovers, irrespective of performance.

However, rather than replicate the JSA arrangements and have a full tender for DES-ESS, the Government has decided to reward high performing providers with a contract extension. This will ensure some stability for people who are currently receiving services from high performing providers.

Recommendation 5

The committee recommends that a transition strategy for clients be released at the same time as the Exposure Draft Request for Tender to allow interested parties to provide feedback at an early stage to the Department.

Response

Supported.

The Government recognises that DES-ESS participants are some of the most vulnerable job seekers in Australia. The Department will commence the DES-ESS Transition Period from 1 November 2012. In preparation for the smooth transfer process for participants, employers and providers, the Department released a transition objective and statement of principles in the third DES Industry Information Paper on 20 January 2012.

The objective of the transition is to ensure a smooth transfer to the future contracting arrangements that has minimal disruption to participants, employers and providers, and maintains the continuity of service.

The Department proposes to manage the DES-ESS transition process using the following principles:

- All participants will:
 - remain connected with their current DES-ESS provider, or
 - be referred to a new or gaining DES-ESS provider taking into account their individual needs and circumstances.
- Transition activities must support continuity of DES-ESS services.
- Transition will continue to support connections between employers and participants where possible.
- Transition activities will support the future employment services arrangements, while honouring existing contractual obligations.

The Department will continue to work closely with industry through the following consultation mechanisms.

- Immediately following the release of the DES-ESS Exposure Draft Request for Tender (the Exposure Draft), information sessions will provide an opportunity to discuss the proposed transition arrangements.
- A Sub-Working Group of the existing DES Reference Group will be established following the release of the Exposure Draft. This Sub-Working Group will assist with ensuring transition is managed as sensitively as possible and in line with the principles outlined above.

Recommendation 6

The committee recommends that the Department, in consultation with key stakeholders, consider the DES performance framework regression modelling information with a view to public release in ways that are accessible, meaningful and helpful to advancing program objectives.

Response

Supported in principle.

The Star Ratings regression model is a sophisticated and complex tool which takes into account a range of factors, including the characteristics of job seekers such as disability. Due to this complexity, not all details of the regression model have been published to date. The Department intends to make information available, on the overarching principles that drives the regression model, to reduce any misinterpretations and any misuse.

The Star Ratings regression model was available for wide public consultation during its development. Information on the DES Performance Framework and Star Ratings system is available on the Department's public website and also on the Employment Service Provider Portal. Further, the Department conducted a series of information sessions for DES providers around Australia in 2010 to explain the DES Performance Framework and DES Star Ratings model in detail.

The statistical regression has been used in the calculation of Star Ratings since it was developed in 1999 for Job Network. Since statistical regression has been used in Star Ratings calculations, it has been subject to a number of independent reviews. These reviews by Access Economics, the South Australian Centre for Economic Studies, and other reviews of employment services by the likes of the Productivity Commission and the Australian National Audit Office (ANAO), have highlighted the significant role that Star Ratings play in fostering ongoing performance improvements and providing incentives for delivering services to more disadvantaged job seekers.

The Government notes the Committee's view that the regression model is understandable once it is explained and intends to further release principle level information on the regression model in a way that is understandable and transparent to stakeholders.

Further, issues relating to the DES performance framework have been referred to the DES Reference Group for further discussion.

Recommendation 7

The committee recommends that the Department develop a robust and quantifiable quality assessment mechanism for services under the DES-ESS, and incorporate that assessment mechanism into the performance framework.

Response

Supported in principle.

Quality plays an important role in the DES Performance Framework. Since 1 January 2002 organisations delivering disability employment programs have been required to be certified as meeting the Disability Services Standards in order to receive funding from the Australian Government. This certification is undertaken by auditors that are independent of the Government.

The Disability Services Standards cover issues such as the privacy, dignity, value, and employment conditions of the person with a disability, and the skills and training for service provider staff working with clients with disability. It is a requirement in the DES Deed that all providers hold current certification against the Disability Services Standards.

Reliance on this certification for the majority of quality assessment in DES helps to remove duplication of quality assurance checking. Further, failure to maintain certification may result in the Department taking remedial action under the Deed against the relevant DES provider. Such action may be taken regardless of a provider's performance against other Key Performance Indicators.

Quality also plays an important role in DES contract management. The information collected for day to day contract management processes at the local level also provides important input to the formal performance discussions held with DES providers biannually.

It is inherently difficult to incorporate a quality of service or a quality of employment assessment mechanism into the DES Star Ratings model. However these elements will be reviewed in any future development of the DES Performance Framework.

The Government notes that an Industry Reference Group, consisting of provider and consumer peak bodies, developed and agreed to the DES Performance Framework and Key Performance Indicators. The extensive work undertaken in the development of the DES Performance Framework ensures that the performance of all providers in DES are assessed in a fair and consistent manner and that participants with specific disability types are taken into account in the DES Performance Framework.

Further, the introduction of the Connections for Quality measure on 1 January 2012 gives DES providers the opportunity to publish both claims and achievements against service quality indicators. This measure will enhance public scrutiny of service quality, and provide job seekers and employers with more informed choices in relation to their individual service needs and a mechanism to provide feedback to the Department on the quality of the services they receive.

Recommendation 8

The committee recommends that the Department consider a trial monitoring program of 52-week employment outcomes for clients of DES-ESS providers.

Response

Supported in principle.

The Government notes that including a longer-term measure in the DES Performance Framework has merit and would further identify and reward sustainable employment. However, it would require an evaluation strategy and significant administrative changes such as variations to the Deed and changes to the current DES Performance Framework. Consideration will be given to the benefits and justifications for making the required changes.

Recommendation 9

The committee recommends that the Department establish regular, proactive monitoring practices to identify incidents where the star-rating system is manipulated by providers.

Response

Supported in principle.

The Government's view is that these arrangements are already in place. The Department already uses a comprehensive range of monitoring and detection strategies to identify activities and practices that impact on the integrity of employment programs. These strategies cover a broad spectrum of activities from centralised data monitoring to site visits and discussions with providers and more detailed feedback from program participants or other third parties through program assurance and customer service lines.

Through its governance arrangements and program monitoring the Department is confident that the vast majority of providers comply with the spirit, intent and letter of their Deed with the Department, the Disability Services Standards and associated requirements for professional service provision to support people with disability.

The Department also has comprehensive and long-standing program governance arrangements which ensure the ongoing quality and accountability of all its employment services programs. This approach meets Commonwealth Government requirements and is reviewed regularly, to ensure its currency and effectiveness. Employment services programs undergo regular audits (both internal and external via the ANAO). The Department also regularly updates its processes in response to these activities and any recommendations by the ANAO.

Major program changes for the commencement of new contracts are subject to Commonwealth Department of Finance and Deregulation 'Gateway Reviews'. These are detailed reviews of governance arrangements for the implementation of program reforms. The DES program underwent a Gateway Review throughout 2009 and 2010, with a final 'Green' assessment awarded – the highest rating possible.

Recommendation 10

The committee recommends that the Department include in the Disability Employment Services – Employment Support Services contract:

- *Definitions of inappropriate practices; and*
- *Provision for the removal of providers who are found to engage in any practices listed in the included definitions.*

Response

Supported in principle.

The Government believes that there is sufficient information available and contractual mechanisms in place to manage inappropriate practices. Non-payable outcomes and non-payable job placements are already defined in the existing DES Deed, which comprehensively detail when an outcome cannot be claimed. The contractual definitions of these outcomes will be strengthened in the DES Deed 2012 – 2015 to further support the management of inappropriate practices. However, some practices which may be termed 'scheming' or 'sharp practices' are more difficult to categorically rule as inappropriate. In determining if a practice is (or could potentially be) in breach of the Deed or in other ways inappropriate, the relevant policy intention, the specific circumstances of the job seeker in question and the broader situation must be taken into account.

Under clause 56 of the DES Deed there is already a range of actions open to the Department to implement for breaches of the Deed as follows:

- (a) suspending any or all of the following:
 - (i) referrals in respect of some or all of the Services, including at some or all Sites; or
 - (ii) any payment under this Deed, in whole or in part;
- (b) imposing additional conditions on the payment of Fees, Funds, Reimbursements or Ancillary Payments or use of the Employment Assistance Fund;
- (c) reducing or not paying specific payments that would otherwise have been payable in respect of the relevant obligation;
- (d) reducing the total amount of Fees, Funds, Reimbursements or Ancillary Payments, permanently or temporarily;
- (e) where DEEWR has already paid the relevant Fees, Funds, Reimbursements or Ancillary Payments under this Deed, recovering the equivalent amount as a debt;
- (f) imposing additional financial or performance reporting requirements on the Provider;
- (g) reducing Participant numbers, the Provider's share of available places and/or the business levels of the Provider, permanently or temporarily;
- (h) reducing the scope of this Deed; and
- (i) taking any other action set out in this Deed.

Breaches of the Criminal Code Act 1995 (deliberate fraud or deception) would be referred for prosecution and are punishable by imprisonment.

As part of the ongoing review of employment programs and their identified risks, where discrepancies between policy and practice are found, findings may result in provider education, recovery of fees, fraud investigation or even the issue of a breach of contract notice. The outcomes for fraud investigations are used to further strengthen the Department's prevention and detection strategies.

In all cases of suspected or detected fraud, a referral to the Department's Investigation Branch must be made by relevant DEEWR staff in accordance with the Department's *Fraud Control Plan 2011-2014* and accompanying *Fraud Referral Protocol*.

Recommendation 11

The committee recommends that the Department collect and publish statistics regarding:

- *the number of reports of alleged inappropriate practice;*
- *action taken in response to these reports; and*
- *the number of providers found to have engaged in inappropriate practices.*

Response

Not Supported.

During the course of the Inquiry, a number of claims were made regarding provider behaviour assumed to influence measured performance. The Report notes that evidence was not provided to support many of these allegations, despite it being sought by the Committee. As such, the Government does not see value in routinely publishing these statistics from a program and quality assurance perspective.

The Australian Federation of Disability Organisations, in answers to Questions on Notice, stated that:

Service representatives supported, and services signed up to, the performance rating system and star rating framework. The system, good and bad, is applied to all services. Criticism of the star rating system has only emerged from services when the Minister announced the tender parameters.

Some allegations, such as statements that job placement and payments were made for positions in Australian Disability Enterprises have been responded to clearly by the Department. Such behaviour is in breach of the DES Deed and actionable by the Department as detailed in the response to recommendation 10.

The Department responded in detail to many of the allegations presented through submissions and hearings to the Inquiry, including details of the auditing, monitoring and contract compliance mechanisms available to manage them.

For example, in the response to the Questions on Notice from the Inquiry, the Department provided the following statement to outline the actions taken in response to allegations of inappropriate practices:

"DEEWR has not taken any DES Provider to prosecution for breaches under the current DES contract. Of the 1.05 million claims made under the DES contract (from 1 March 2010):

- *around 4,000 have been withdrawn prior to payment*
- *around 1,500 have been rejected by DEEWR Account Managers*
- *in addition, just under 2,000 have been offset (against other claims) or, in a small number of cases, recovered directly. Some of these recoveries are as a result of quality assurance programs both at the local Contract Manager level and by the DES program area.*

An examination of a sample of these claims has identified that the majority of offsets / recoveries and almost all of the withdrawn claims, are as a result of provider self identification of invalid claims."

In the absence of substantive evidence to the contrary, it is clear that the existing mechanisms detailed by the Department in this response are adequate to respond to compliance issues where there are grounds to do so.