

Chapter 3

The tender process

3.1 This chapter covers the period from the initial consultation processes prior to the release of the tender through to the preferred tender process. It describes the employment services model, the timing of the tender, the assessment process, the weighting given to past performance and the concerns of specialist and not-for-profit providers.

3.2 Much of the dissatisfaction which has been strongly expressed by unsuccessful tenderers lies in the apparently inexplicable failure of the tender process to acknowledge the solid performance of many not-for-profit service provider applicants. Serious concerns were expressed regarding the design and structure of the tender process. What is also open to question is whether an excessive preoccupation with probity procedures has not resulted in the loss of valuable community support networks which have been laboriously constructed over a number of years. Much of the evidence in the inquiry invited the committee to consider whether the tender process has put important social infrastructure networks at risk.

3.3 The committee majority is also left with unanswered questions about probity issues related to the tender process. Although a probity adviser was employed to oversee the process, why further providers were added in April to the list of preferred providers drawn up in March has not been satisfactorily explained. The committee majority takes the view that the disbursement of \$4.9 billion in public funds through this exercise requires the highest levels of accountability and disclosure.

Background to the release of the tender

3.4 In early 2008, the government commenced a review of employment services to address concerns raised by providers and stakeholders. It was argued that the number of programs needed to be reduced; that the system was inflexible and did not allow the individual needs of job seekers to be adequately taken into account; more assistance was required for highly disadvantaged job seekers; the administrative burden placed on providers had increased; there was a need to have better links between employment services and training opportunities and there was dissatisfaction with the star ratings for provider performance.¹

3.5 Extensive consultation was undertaken prior to the release of the Request For Tender (RFT) which included the release of a discussion paper. This proposed a streamlined model of employment services with job seekers assessed and placed in

1 DEEWR, *Submission 12*, pp. 6-7.

one of four streams according to their level of need.² An exposure draft of the RFT was released and consultations on the exposure draft were held around the country.³ Submissions were received on the discussion paper and the draft RFT and changes were made to address concerns raised.

Timing of the tender

3.6 The tender was released on 27 September 2008 and closed on 14 November 2008.⁴ This process coincided with a worsening of the economic outlook, and the government received some criticism in regard to the perception that the tender took no account of this. DEEWR maintained that there was no capacity to extend programs as 95 per cent of the current Employment Services Contract and Funding Deeds expire on 30 June 2009. For other programs such as Personal Support Program (PSP) and Job Placement, Employment and Training (JPET), the Department of Education, Employment and Workplace Relations (DEEWR) advised that it would be impractical to extend these programs because they were incompatible with the fundamental changes in the way they would need to operate under the new streamlined model.⁵

3.7 DEEWR told the committee that according to internal legal advice the current contracts could not be extended. As defined under the Commonwealth Procurement Guidelines, this would be a new procurement and it was necessary to run a competitive tender process.⁶

The tender process

Role of DEEWR

3.8 The competitive tender process was undertaken by DEEWR. The process was supported by governance arrangements, tender guidelines and training for staff undertaking the assessments. The considerable experience and comprehensive training and support for those involved was emphasised by DEEWR

...Right from the beginning we set out very detailed guidelines of what procedures and protocols are to be followed at every single stage, whether it be assessment or quality checking or review—any of the stages. That is followed up by extensive training of the assessors. There are teams of two people at all times and...we do up to about seven layers of checking of that assessment. With all of this, including the guidelines and training, as well

2 Ibid., p. 7.

3 Ibid., p. 9.

4 Information available from: http://www.workplace.gov.au/NR/rdonlyres/978EBA80-B53E-4282-A1AC-FBCECEB4FF48/0/Job_Services_AustraliaSupport_for_Providers_and_Affected_Staff_to_Tra nsition.pdf, accessed 19 May 2009.

5 DEEWR, *Submission 12*, p. 19.

6 Ms Golightly, DEEWR, *Committee Hansard*, 11 June 2009, p. 82.

as the assessment and decision making, the probity adviser is involved and checks off each step of the way to make sure that we are adhering to objectivity, fairness and value-for-money principles, as do our own internal legal people.⁷

3.9 DEEWR advised the committee that they received advice on best practice processes from their external probity adviser.⁸

Independent probity adviser

3.10 The tender process was overseen by an independent probity adviser from Clayton Utz and was conducted at arms length to government. DEEWR advised that the probity adviser provided an unqualified sign-off on the conduct of the whole tender process.⁹

3.11 Clayton Utz advised that their role was to:

...ensure that the process was conducted by the department fairly, transparently and in an ethical and equitable manner, and that due process was followed.¹⁰

3.12 Clayton Utz concluded that the tender process was very well run 'and compares favourably, in our experience, with the best managed of other Australian Government procurement processes'.¹¹

Contact with DEEWR during the tender process

3.13 Once the RFT was released, tenderers were able to ask questions and submit views.¹² MTC Work Solutions advised that questions had to be emailed to DEEWR but a response time was not guaranteed and suggested that 'in some instances waiting for over a week for a response could have had a significant effect on the design of a tender'.¹³

3.14 NESAs confirmed that the tender help line was ineffective as no information could be directly provided and callers were instructed to email the tender inbox which

7 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 30.

8 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 83.

9 DEEWR, *Submission 12*, p. 19.

10 Clayton Utz, *Submission 9*, p. 1.

11 Clayton Utz, *Submission 9*, p. 3.

12 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 43.

13 MTC Work Solutions, *Submission 4*, p. 4.

was not responsive. It cited delays of up to two weeks and reported that some questions were not answered at all.¹⁴

3.15 The committee was told that information provided to tenderers must necessarily be limited and DEEWR officers were appropriately circumspect in view of the need to ensure that individual tenderers were not advantaged by the contact with the department.

3.16 The committee majority notes that, in analogous circumstances, tender committee in a purchaser-provider model can include representatives of the user groups (for example in this case a business person who is an end user of the training programs, a past service provider and/or a past trainee of the program). The tender committee in the present instance was comprised solely of department personnel who have never been either providers or recipients of the service.

3.17 A committee with broader membership may have been helpful in this process. The drawbacks of relying solely on written submissions may have come to the surface if people other than departmental officers were included on the panel.

Committee view

3.18 While it is not possible for the committee to make a judgement about the department's treatment of answers to questions from tenderers, the committee majority believes that waiting for 1-2 weeks for a response to a question when it could affect the preparation of a tender is unsatisfactory. At the very least some indication of the timeframe for a response should have been provided to tenderers.

Recommendation 1

3.19 The committee majority recommends that in any future tender process a response time for questions to be answered should be indicated and adhered to by DEEWR.

Reliance on the tender submission

3.20 Tenders were submitted as written documents, and witnesses told the committee that the experience was very much like writing an essay. Some argued that there was an over-reliance on the written tender documents. There are two issues. First, smaller organisations lack the resources to develop complex tender documents. Second, there appears to have been an over-reliance on the claims presented in the tender which, in some cases, did not seem to have been verified. In relation to the first issue, Catholic Social Services Australia (CSSA) commented that:

The issue here is that because the tender selection process is based almost solely on the written tender submission, the list of winners will be biased towards those organisations that can 'talk the talk', whereas many that have

14 NESAs, *Submission 13*, p. 10.

long demonstrated their ability to 'walk the walk' are disadvantaged in the selection process.¹⁵

3.21 The over-reliance on written statements was a common theme in submissions. The Australian Council of Social Service (ACOSS) stated:

The playing field appears to have been tilted in favour of those with a strong submission, as distinct from a strong performance in the field.¹⁶

3.22 Witnesses told the committee that the only way to respond to the tender was by a 'character limited, electronic word document'. While acknowledging the need for a degree of uniformity some tenderers found this format too restrictive to allow the 'full extent of the innovation, relevance, passion and commitment of the organisation to be expressed'.¹⁷ This was also noted by Job Futures which struggled to tell the story of its model, its national performance and the local stories of its members.¹⁸

3.23 There was a perception of a lack of checking and verification of claims on the part of DEEWR. MercyCare said that in their view:

...the entire tender lodgement and assessment process was done with no discussion, validation or correspondence between DEEWR and the tenderers. This limited the scope of responses and significantly reduced its effectiveness of the tender process.¹⁹

3.24 Mr Peter Davidson, Senior Policy Officer, ACOSS, warned the committee that the tender process with its emphasis on written submissions, did not take into consideration 'that factor X that does not appear in a submission and cannot be taken into account in detailed scoring'. He explained:

It is a bit like interviewing jobseekers for a position. When you actually get them in the room and talk with them you find that they perform very differently, sometimes, to the impression you would have received from their application. To take that factor X into account you really need to engage directly with the providers and probably with other stakeholders in the area who have knowledge of the needs of local jobseekers. That is trickier because that would raise probity issues, but we think all of these issues should be explored for the next time around.²⁰

3.25 NESAs also pointed out that there were concerns about how DEEWR could assess tenderers to deliver the proposed strategies and how the validity of claims within bids was assessed.²¹

15 Catholic Social Services Australia, *Submission 17*, p. 7.

16 Australian Council of Social Service, *Submission 18*, p. 5.

17 MercyCare, *Submission 8*, p. 6.

18 Job Futures, *Submission 2*, p. 4.

19 MercyCare, *Submission 8*, p. 7.

20 Mr Peter Davidson, ACOSS, *Committee Hansard*, 11 June 2009, p. 40.

21 NESAs, *Submission 13*, p. 6.

3.26 NESAs indicated it had received no complaints about lack of contact with referees.²² However, successful and unsuccessful tenderers appearing before the committee were asked by the committee whether they were aware of their referees being contacted to verify claims. None were aware of this occurring.²³

3.27 DEEWR gave evidence that, where a provider was already known to the Department, its referees were not necessarily contacted, but where a provider was new to the 'system' the referees were contacted.²⁴ The committee majority feels that this creates a potentially-unlevel playing field, in that some referees were regularly contacted and others not. This might be said to create an advantage for new overseas tenderers, whose referees would all have been contacted under this policy.

Committee view

3.28 The committee majority notes the department's apparently heavy reliance on the written tender documentation and its inquiries through its own 'networks' about the performance of certain tenderers. It also notes with some concern the absence of any face-to-face exploration of bids with the proponents.

3.29 The committee is aware of time constraints and human resource implications of interviews. Nonetheless, the committee majority was concerned to hear from witnesses about an over-reliance on written submissions and the evidence of inadequate validation of claims made in the tender documents. It notes with sympathy suggestions that the process needs to include direct contact with short-listed tenderers, which may include an interview process. While it would be argued that such a process would add an element of subjectivity which might test the probity checks, this is a justifiable exercise in risk management.

Assessment

3.30 There are now 116 Employment Service Areas (ESA) across Australia, and organisations were required to nominate the ESAs they wished to compete for. Tenders were measured against each other on an area by area basis.

3.31 DEEWR explained the assessment process:

The assessment teams are teams of two people, who are experienced in employment services and also have knowledge about delivery on the ground. Those people assess those claims, checking them against other data that we might have or indeed that other Commonwealth agencies or state government agencies might have. We have other networks, of course, on

22 Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 55.

23 For example see MercyCare, *Submission 8*, p. 6; Mr Ashley Reid, MercyCare, *Committee Hansard*, 11 June 2009, p. 8; Ms Karen McLaughlan, WAYS, *Committee Hansard*, 11 June 2009, p. 26; Ms Tracy Adams, CEO BoysTown, additional information, 15 June 2009; Mr Peter Davidson, ACOSS, *Committee Hansard*, 11 June 2009, p. 36.

24 Ms Malisa Golightly, DEEWR, *Committee Hansard*, 11 June 2009, p. 97.

the ground that we can check with. We have the experience with other programs that we might run that some of these linkages actually relate to. So there is a whole range of things. That assessment by those two people is then checked by a senior contract manager and also, at another level, by a state manager who knows all of those people who know the local area and the area that we are talking about. They do a comparative assessment, as well as a consistency check, and they overlay on all of that their knowledge of various things, including the local linkages. That then comes to a tender review committee that is, again, a committee of senior people in the department. All sorts of things are discussed at that committee, including the substantiation of claims, et cetera. All of that then leads to a recommendation.²⁵

3.32 DEEWR further explained how the tenders were assessed for each ESA.

...the tenders are all assessed for the particular ESA to which their bid applies. It is a contract on an ESA basis. The tenderers in ESAs would be assessed on their strategies, on their implementation, on their experience and on how they were going to apply those to the particular profile of job seekers, employers and the local circumstances of that ESA. The claims and proposed strategies of the tenderers would be assessed against all the selection criteria, but selection criterion 3, in particular, would be assessed on that basis.

Other things are taken into account as well, as per the RFT, in that decision. For example, we compare for that particular ESA what coverage different tenderers are offering us. One tenderer might be offering us one site, others might be offering us 10—and everything in between. We look at diversity of choice for job seekers in a particular ESA, and tenderers can bid for a particular range of business. They could bid for a minimum of 10 per cent and a maximum 50 per cent share of the market, for example. And then we have specialist bids—we mentioned the specialist providers as well, who are bidding for a particular cohort of job seekers.

All of those things end up being unique for each ESA. So you may well have had an identical bid from one tenderer, but it is compared to the circumstances of the local labour market and also compared to other bidders in that ESA. Some ESAs had up to 48 bids, so there was quite a lot to be considered.²⁶

Decision making

3.33 The tender process included seven levels of consideration and quality assurance:

25 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 29.

26 Senate Education, Employment and Workplace Relations Committee - Legislation, *Estimates Hansard*, 1 June 2009, pp. 29-30.

1. a team of two experienced staff undertook an initial assessment of each tender;
2. senior account managers reviewed the assessment and moderated for consistency;
3. legally qualified staff oversaw a formal quality assurance process;
4. state managers undertook a further review and consistency check;
5. the Tender Review Committee (TRC) was comprised of senior departmental officials and it reviewed each proposed business recommendation;
6. the TRC further considered the assessment and reviewed tenderers' capacity to deliver; and
7. the TRC conducted a final end-to-end review to ensure the best results for job seekers.²⁷

Selection Criteria

3.34 Selection criteria included: understanding and general strategies (20 per cent); management and governance (10 per cent); past performance (30 per cent); and local strategies (40 per cent). Each of these had subcriteria and there were also specific selection criteria for particular services such as remote ESA and harvest labour services. Of these, past performance and local strategies attracted particular comment from witnesses.

Past performance

3.35 A number of organisations which were unsuccessful in the tender round expressed surprise at not being selected as they had received good performance ratings.²⁸ They questioned whether past performance had been adequately taken into consideration.

3.36 For instance, NESAs told the committee that:

The loss of experienced, skilled and high performing employment service organisations weakens the sector and its ability to meet the needs of Australian job seekers and employers. Providers including those who have been successful highlight that some outcomes on face value appear counter intuitive...²⁹

27 Information available from: http://www.workplace.gov.au/NR/rdonlyres/F1F6E72D-FE92-46CD-8704-6655479B6403/0/Job_Services_AustraliaThe_Tender_Process.pdf accessed 19 May 2009.

28 Note: A 1-5 star rating system was used to compare providers during the contract.

29 NESAs, *Submission 13*, p.5.

3.37 On the issue of high performing organisations losing contracts, MercyCare noted the:

...removal of a large number of high performing agencies will impact adversely on many job seekers and that this will impose significant cost and disruption to the sector generally. The networks, partnerships and trust that we have established over many years can not be replicated overnight. New providers will take months, if not years to reproduce what has now been lost....³⁰

3.38 In particular, for their organisation MercyCare noted:

Given our record of high performance, there appears to be an anomaly between the feedback that we have received from DEEWR, regarding the strengths of proposal, and the attention paid by DEEWR to past performance in the assessment of our tender proposal.³¹

3.39 Mr Ashley Reid, MercyCare, further explained:

The strict adherence to the process ... does not necessarily make for a good outcome. A process can be robust and yet flawed. If sound performers with good track records, integrated services and solid working relationships with employers, community organisations and other government departments are excluded, then we would question the effectiveness of such a process.³²

3.40 Catholic Social Services Australia noted that with hindsight the 30 per cent weighing for past performance was inadequate for:

...allowing far too many proven performers to be dumped from the services on the basis of their written responses to selection criteria which we have already argued biases the results to larger, richer entities so often unproven in particular local areas.³³

3.41 This view was supported by the Australian Council of Social Services which also noted:

I think the issue here is the balance between probity and actually finding out how good a provider is. There is a tension there. You can have a process that is technically perfect and which is not open to the slightest external influence, but it will not produce the right result because the people making the decision do not have access to the information they need to make the right decision.³⁴

30 MercyCare, *Submission 8*, p. 3.

31 *Ibid.*, p. 5.

32 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 4.

33 Catholic Social Services Australia, *Submission 17*, p. 3.

34 Mr Peter Davidson, *Committee Hansard*, 11 June 2009, p. 35.

3.42 Jobs Australia also submitted that there were a number of instances where high performing providers with extensive track records and an undoubted capability to deliver the new suite of Job Services Australia services were unsuccessful or were offered substantially reduced levels of business.³⁵

3.43 NESAs advised the committee that during the consultation process industry members offered mixed views regarding the proposed weighting for past performance. Some wanted a higher weighting for demonstrated capacity to deliver high performing employment services over proposed strategies yet to be tested. On the other hand, it was recognised that it was not appropriate to use a high performance weighting for the delivery of current services for a significantly different model. NESAs noted that while there were mixed views 'it was commonly considered that those with demonstrated high performance would rate more highly on that criterion'.³⁶

3.44 DEEWR explained that past performance was only part of the evaluation process and the success of a tender depended on the ability to show the capacity and strategies to deliver the business model required. It also depended on a unique combination of factors for each which included not only performance but coverage, range of business and diversity of choice for job seekers.

Committee view

3.45 The committee majority notes that there did not appear to be a consistent industry view regarding the weighting given to past performance. While acknowledging that consultation was undertaken with stakeholders, witnesses told the committee that in hindsight 30 per cent was inadequate weighting for demonstrated performance. The committee majority agrees with this view, noting that a direct product of inadequately valuing past performance has been the loss of hundreds of person-years of experience from the employment services market, as well as considerable goodwill and trust from jobseekers towards particularly staff members of unsuccessful services.

3.46 The committee majority rejects the argument that the arrangements under the new tender for Job Services Australia are more efficient and will result in any dramatic change to the way things are done. The essence of successful operations is the degree to which the provider can connect with disadvantaged individuals in search of jobs. Inevitably valuable expertise in that field is being lost by virtue of the tender outcome.

Local strategies

3.47 A weighting of 40 per cent was placed on local strategies and collaborative arrangements to achieve outcomes where the organisations were to refer 'to the unique

35 Jobs Australia, *Submission 16*, p. 2.

36 NESAs, *Submission 13*, p. 3.

characteristics of the local labour market' in describing the service they would provide to job seekers.³⁷

3.48 DEEWR explained the assessment of this selection criteria which had apparently resulted in confusion over some ESA results:

The issue is that the tenders are all assessed for the particular ESA to which their bid applies. It is a contract on an ESA basis. The tenderers in ESAs would be assessed on their strategies, on their implementation, on their experience and how they were going to apply those to the particular profile of job seekers, employers and the local circumstances of that ESA. The claims and proposed strategies of the tenderers would be assessed against all the selection criteria, but selection criterion 3, in particular, would be assessed on that basis.

3.49 The committee was told that tenderers could bid for whatever coverage they wanted within an ESA and the department aimed at awarding contracts to ensure a diversity of choice for job seekers in a particular ESA. In addition, there were specialist bids for a particular cohort of job seekers.

All of those things end up being unique for each ESA. So you may well have had an identical bid from one tenderer but it is compared to the circumstances of the local labour market and also compared to other bidders in that ESA. Some ESAs had up to 48 bids so there was quite a lot to be considered.³⁸

Committee view

3.50 The committee majority notes the potential disruption to staff and job seekers where high performing providers with knowledge, networks and expertise are replaced by new providers from outside the community. The committee is disadvantaged in having no insight into the reasons why decisions were made to award some tenderers contracts and not others. The explanation above is purely mechanical and does not explain why, for instance, an established and successful provider can be displaced by a tenderer with no local knowledge.

Barriers for smaller and specialist providers

3.51 The committee heard evidence from some specialist providers about how they found it difficult to tender in their own right for a particular target group. Barriers identified by Joondalup Youth Support Services, which did not submit a tender, included:

- that the fee for services model requires an initial injection of funds from the services provider as an office and staff need to be present before any payment

37 Request for Tender for Employment Services 2009-12, p. 84.

38 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, pp. 29-30.

is received. This would be difficult for small and specialist providers who do not have the capital for this;

- the mission and values of many specialist providers is to work with those most disadvantaged in the community and therefore stream 1 and 2 clients is not the direction these agencies wish to take;
- the new model will require the provider to deliver a multitude of services, work experience, work for the dole, job matching, career guidance and post placement supports. Many of these would need to be subcontracted which would result in additional administration and financial management.³⁹

3.52 A perception of an inherent bias in favour of larger organisations was also identified by Indigenous Directions and Development Limited which believed that smaller organisation cannot compete at this level.⁴⁰ This view was also supported by Waverley Action for Youth Services.⁴¹ Ms Tracy Adams, CEO BoysTown acknowledged that it would be challenging for smaller organisations to find the resources and expertise to write their own tenders.⁴² NESAs, CSSAs and Ms Wilma Gallet also noted that the costs associated with the tender process can be considerable for stakeholders.⁴³

3.53 The relative size and resources of organisations was also noted by Catholic Social Services Australia (CSSA) which advised:

Such a model is biased strongly towards larger entities with substantial and costly business development and authorship expertise. Unfortunately, most small to medium-sized business, not-for-profit organisations do not have the resources to engage specialist tender writers and draw their tender writers largely from service delivery managers and staff...⁴⁴

3.54 Mr Frank Quinlan, CSSA, pointed to a linear reduction in the number of providers over the past decade and expressed his concern about the role of smaller providers:

...it seems to me that, notwithstanding the various rhetoric and invitations before the process began, that it is in fact those smaller community providers, the PSP based programs, those specialist services that have essentially been put at arm's length in this process. They have either missed out completely or they are at the end of subcontracting arrangements with major providers that I think, frankly, are going to end in tears and some of

39 Joondalup Youth Support Services, *Submission 1*, p. 2.

40 Indigenous Directions and Development Limited, *Submission 5*, p. 1.

41 Waverley Action for Youth Services, *Submission 7*, p. 5.

42 Ms Tracy Adams, *Committee Hansard*, 11 June 2009, p. 44.

43 NESAs, *Submission 13*, p. 14; Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 11; Ms Wilma Gallet, *Submission 21*, p. 4.

44 Catholic Social Services Australia, *Submission 17*, p. 7.

them, I already know, are beginning in tears, so even before the process gets underway. It is very difficult to see how, in a tight marketplace, an agency that is delivering services to the most vulnerable and most disadvantaged at the end of a subcontract is going to be rewarded and supported appropriately to do that work on an ongoing basis.⁴⁵

3.55 Mr Ashley Reid, MercyCare, described the reason some smaller providers did not participate in the tender process:

Seven programs were collapsed into single stream services and then 100 per cent of that was tendered. It is a double hit, if you like. I have spoken to small community providers in Perth, PSP single service JPET providers, who have said, 'We cannot provide stream services so we cannot tender.' The very design of collapsing seven programs into one and then putting 100 per cent of that to potential turnover is what has caused this incredible churn.⁴⁶

3.56 DEEWR advised the committee that smaller and specialist providers were encouraged to seek out partnerships and subcontracting arrangements with assistance given by the department and NESAs in this area. Some witnesses believed that subcontracting arrangements were the only real option for smaller organisations to continue and this may have written some current providers out of the process.⁴⁷

Committee view

3.57 The committee majority notes what appears to be a restriction of the market as evidenced by the reduction in the numbers of successful organisations. The tender process appears to favour larger organisations which have more resources at their disposal and with the capacity to inject capital and meet the administrative requirements. The committee majority acknowledges advice that the number of specialist providers has increased from the current Job Network.⁴⁸ However, it notes with concern evidence provided to the committee that many smaller organisations, with valuable experience and insights, felt unable to compete and decided not to tender at all.

3.58 The committee majority acknowledges the policy intention to encourage subcontracting and partnership arrangements to ensure the inclusion of smaller organisations. The evidence, however, from smaller organisations indicates these organisations face barriers to competing against large organisations in the tender process. The committee majority is concerned that smaller operators may have felt disadvantaged and effectively forced out. Ultimately this may lead to a loss of specialised skills. The committee will continue to question DEEWR on the

45 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 10.

46 Mr Ashley Reid, *CSSA, Committee Hansard*, 11 June 2009, p. 11.

47 Waverley Action for Youth Services, *Submission 7*, p. 2.

48 Ms Malisa Golightly, *DEEWR, Senate Estimates Hansard*, 1 June 2009, p. 31.

participation rates of displaced providers as sub-contractors when the market settles down once more.

Barriers for not for profit providers

3.59 Employment Service Contracts 2 and 3 saw the increasing number of church welfare agencies providing employment services. For this tender process, DEEWR advised that the mix of private and not for profits remains largely the same. However, it would appear that there has been churn in the not for profit sector.

3.60 The committee majority understands the logic of using a competitive tender process to ensure a level playing field but is concerned about the unintended consequence of a loss of community services once provided by the not for profit tenderers. As noted by MercyCare:

...we believe that overall outcome is inconsistent with the Government's commitment to social inclusion and to its commitment to developing a new Compact with the Community Sector. The process of this tender has not considered the consequential adverse effect on other community services provided by non profit agencies that have now been excluded from this employment service.⁴⁹

...the surplus generated from our employment service has been fully reinvested back into our other community, which will now be required to either close or significantly reduce the scope of their services.⁵⁰

3.61 This aspect as also noted by the Australian Services Union:

...a number of not for profit providers cross subsidised other community services programs and we note that there is an unintended knock-on effect to these services as a result of the loss of JSA contracts, which sees employees outside the employment services adversely affected by the JSA decisions.⁵¹

3.62 Waverley Action for Youth Services (WAYS) also explained that the organisation has:

used the employment services business model to subsidise the delivery of a range of other state and federally under funded programmes and initiatives that have met a range of community concerns.⁵²

3.63 WAYS told the committee that as a consequence of its tender loss, outreach services to 2000 young people will stop, reducing the alcohol and other drug and sexual health interventions designed to reduce the harm associated with binge

49 MercyCare, *Submission 8*, p. 3.

50 Ibid., p. 7.

51 ASU, *Submission 10*, p. 2.

52 Waverley Action for Youth Services, *Submission 7*, p. 1.

drinking. There will also be reduced availability of family, drug and alcohol counselling services to young people and families and a reduction in the hours of opening of the drop in youth centre and the closure of dedicated youth sexual health services and a proposed GP clinic in the Randwick area.⁵³

3.64 Mr Barry Sheehan, Director, Centacare Toowoomba, provided the following example of deprivation of service to the Sudanese population in Toowoomba:

We have a refugee migrant service. We have probably got three programs. They are partly funded out of the income we can generate from job services. Anyone can write in a tender, 'We have or will have significant links with Sudanese people.' I am really concerned about the Sudanese people. Our agency has a relationship with them. They are not going to go to newcomers straight away. It is the same with our Aboriginal clients. It is a real struggle.⁵⁴

3.65 The Australian Council of Social Services noted their concern that:

...the profile of providers may have shifted in ways that weaken the provision of high quality services for disadvantaged communities. This could occur if fewer resources are available to not for profit providers with strong connections in local communities, or providers that integrate their employment services with other community services for disadvantaged people such as homelessness or family counselling services (including specialist providers offering services under the JPET or PSP programs)...⁵⁵

3.66 Mr Frank Quinlan, CSSA, questioned the model that resulted in these outcomes:

...I hope more than anything else the inquiry has an opportunity to ask, even if implemented with probity, is this purchasing model the best way to ensure high quality services are provided to the unemployed, to their families and to the broader community...

We do not need to accept the premise that this iteration of the purchaser-provider model is a legitimate approach to the development and implementation of community services of this kind...

I think the most important question this inquiry can ask is whether this purchasing system and this tendering process is actually examining and valuing the things that good government would hope for in a system of services to the unemployed, or is it valuing only a very limited fraction of factors that can be measured relatively easily.⁵⁶

53 Ibid., p. 2

54 Mr Barry Sheehan, *Committee Hansard*, 11 June 2009, p. 9.

55 ACOSS, *Submission 18*, p. 5.

56 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 2.

3.67 BJL Connecting Communities advised the committee of the inherent difficulty for the non profit sector of trying to fit into a business model:

It should be remembered the business of non profits is not business. The third sector is committed to a strategic direction that is ethically sound; holistically placed within their value system and that it is grounded within their philosophy and purposes. For many of the smaller non profits that were excluded from gaining a new Employment Service Contract their core business is social inclusion and they work to ensure that in this global society community-driven solutions to local problems is more than a Commonwealth Government statement – it is the reality we work in and achieve in everyday.⁵⁷

3.68 Commentators have drawn attention to a conflict within church organisations providing welfare services. Some claim that providing government services effectively corrupts the culture of the church welfare agencies and turns them into pseudo-state organisations. This may compromise their commitment to their religious beliefs or create conflicts of interest.⁵⁸ On the other hand the Salvation Army noted that the reverse could also be true, 'that church welfare methods have greatly influenced the programs provided for welfare recipients'.⁵⁹

3.69 A number of difficulties with the system were pointed out over the years by the agencies themselves and by surveys.⁶⁰ The transfer of government responsibilities to agencies made these organisations more responsible for compliance monitoring. Staff can face a tension between the mandatory reporting of welfare recipients who breach their obligations which would be in conflict with their responsibility to provide indiscriminate care.⁶¹

3.70 The tension for not for profits was mentioned by Mr Quinlan, CSSA:

For our organisation and for our member organisations there is a constant balancing act about the extent to which we are actually delivering services that arise out of our mission and the extent to which we are just merely providing services because they are available under government.⁶²

57 BJL Connecting Communities, *Submission 3*, p. 1.

58 See for example Samuel Gregg, *Playing with Fire – Churches, Welfare Services and Government Contracts*, Centre for Independent Studies, Issue Analysis, 14 August 2000.

59 John Dalziel, 'Welfare role tests the faith', *The Australian*, 16 August 2000.

60 See Adele Horin, 'Cash-poor job agencies have given ethics the sack: report', *Sydney Morning Herald*, 23 November 2006, p. 3; David Abello and Helen MacDonald, 'Job Network: Changing Community Sector values', *The Drawing Board: An Australian review of Public Affairs*, Volume 3, Number 1, July 2002; Misha Schubert, 'Job Network fails to help neediest', *The Age*, 21 July 2005, p. 9.

61 See also the concerns regarding the funding model raised by the Joondalup Youth Support Services, *Submission 1*, p. 4.

62 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 9.

3.71 The not-for-profit sector sees itself in partnership with the government to deliver employment services. The issue was well described by Professor Richard Mulgan:

Debates over the tender, and this inquiry itself reflect a clash between two views of the relationship between governments and private service contractors. On one view, service providers under contract are independent organisations with their own priorities and objectives who choose to align themselves with the government's specific requirements in order to seek material benefits for themselves. On the other view, service providers under contract are trusted partners of the government in the common goal of assisting those in need, a goal which they share independently of any contractual arrangement.⁶³

3.72 Professor Mulgan noted the model of a partnership with shared goals generally suits the not for profit providers such as church-based organisations. He advised that the classic contract model proved inadequate for more complex services such as IT and HR management because of the difficulty of specifying every requirement in advance.⁶⁴ Providers have certainly pointed to the increasing requirements and bureaucracy placed on third party providers over recent years.

3.73 The trend over the last decade has been towards 'partnerships' and 'alliances'. However this tender process which opened up all positions for competition has moved the model back towards the classic contract model to gain the advantages of specification and competition and to guarantee transparency and fairness.⁶⁵ Professor Mulgan explained that the reaction of not-for-profit organisations can be compared to that of a trusted employee who is told regularly that they are valued and then told their job is to be advertised in the interests of improving efficiency and out of fairness to other prospective employees.⁶⁶ Professor Mulgan argued that for future processes the government must decide whether to reinstate a preferential system or to open up all services to competition each time, noting:

The latter course has the advantage of transparency and fairness and allows ministers to avoid any accusations of favouritism. But it risks alienating the church groups, whose general support and assistance will be increasingly needed by government in a time of deepening recession and unemployment.⁶⁷

3.74 There is no doubt that the idea of a partnership with government is alive in the minds of these providers. For example, Catholic Social Services Australia told the committee:

63 Professor Richard Mulgan, *Submission 14*, p. 1.

64 Professor Richard Mulgan, *Submission 14*, p. 2.

65 Ibid.

66 Ibid.

67 Ibid., p. 3.

Community services are potential partners with government, not merely agents or providers of government services, and I hope this inquiry can make some very concrete recommendations about how this partnership might be fostered.⁶⁸

3.75 Mr Reid, MercyCare, expressed that:

...I am still struggling to convey the impact and the feeling of the loss of these services after 10 years of shared commitment to government programs to help the most disadvantaged.⁶⁹

3.76 Not for profit organisations emphasised that they are committed and most of their staff see the work as a vocation⁷⁰ instead of a 9-5 job and go above and beyond the contract requirements. Mr Reid explained:

Our staff, hard working and committed, do not do this for the money or the glory. People who work in the human services area do this because they have a genuine desire to contribute and to help those who are most disadvantaged.⁷¹

3.77 On the issue of commitment from not for profits, Mr Barry Sheehan told the committee:

A lot of the unemployed in Toowoomba, or a significant number at least, have barriers to employment. They have mental health issues, homelessness and substance abuse. Our staff work with them. It is not just about ringing an employer and saying, 'Let's get a job.' When we get those long-term unemployed people, 20 years unemployed, getting jobs, it is about the whole person. It is addressing the homeless. It is my staff going up to the psychiatric unit at 9 o'clock at night. They do not get paid for that. DEEWR does not pay them for that. They do it because they are committed to this process.⁷²

3.78 The committee heard a clear message that, for some traditional partnership providers, employment services were only one element to a whole-of-care program aimed at helping those in need. As Mr Reid of MercyCare stated:

We provide many community services beyond employment services. The ability to provide holistic care for people in very difficult circumstances was, what we thought, the strongest part of our tender and our bid, and the work that our staff did was many times above and beyond the black letter of the contract. I have seen people go out to employers at midnight, in their own time, to talk to shifts who have been made redundant in order to help

68 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 3.

69 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 3.

70 Waverley Action for Youth Services, *Submission 7*, p. 6.

71 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 3.

72 Mr Barry Sheehan, *Committee Hansard*, 1 June 2009, p. 5.

people. An Indigenous lady, just recently, brought her teenage son into one of our offices and said, 'This mob will help you get a job.' It is very difficult to recreate and to explain some of those local relationships that have occurred over time. I guess that is where our disappointment lies, in the people that we serve and whom, after 30 June, we will no longer be able to. Some of the richness of what the community sector brings to these services has been lost.⁷³

3.79 The committee was told that some staff of unsuccessful tenderers have felt so badly treated that they have decided to leave the sector altogether and taken their valuable experience with them. Mr Reid provided the following example:

...many of the staff have said, 'We're not continuing in this industry if this is how we'll be treated. It doesn't matter which provider we go to.' That is a loss of expertise, of knowledge and of relationship. That is more distressing because I would rather see those very hard-working, committed staff—as much as it is trying not to be sour grapes from an individual provider—continue to provide service and be retained in the sector, not retained by us per se, and a fair number will not be.⁷⁴

3.80 Jobs Australia also pointed out that staff are choosing to leave the industry 'because they have had enough of this rollercoaster approach to whether they do or do not have a job':

Where that is particularly poignant is, as an example, a Job Network agency that is a five-star provider that delivers PSP and is a high performing PSP provider, but they got nothing. They say, 'All of my hard work for nothing. I'm not going to stay here and keep doing that.'⁷⁵

3.81 As noted earlier in relation to responding to the RFT and the limitations in the application process, the difficulty of the competitive tender process for not for profits was explained by Mr Quinlan from Catholic Social Services Australia:

...there is very little opportunity to talk about the whole approach. There is very little opportunity to talk about, for instance, all the infrastructure, the capital renewal, the staff training, the history, the engagement with the community, the donors and all of that. It is very difficult to bring that into a process that is clear. I think that is perhaps crystallised in this particular DEEWR process that seems to have been largely a paper based process. It just simply has not given due weight to the additional value, in terms of the additional monetary value of all those commitments, but also the additional value for money in terms of the issues around respect for clients and the way in which people are treated, which is much harder to assess and much harder to put a dollar value on. As both of our directors have indicated, how you assess the value of the way a staff member treats an unemployed

73 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 4.

74 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 12.

75 Mr David Thompson, *Committee Hansard*, 11 June 2009, p. 77.

person with respect is a real challenge and it is something that is not easily gleaned from this sort of really tightly focused purchaser-provider sort of model.⁷⁶

3.82 From experience, Mr Reid advised the committee that the more integrated and holistic the service, the more difficult it is to describe it in the limited words and scope required by the tender process.⁷⁷

3.83 The issue of capturing this additional community benefit and how to achieve that was discussed with witnesses by the committee. Mr Quinlan explained the background:

...I think there is a very different set of circumstances when an agency effectively grows up out of a local community and then seeks opportunity to broaden its services, to provide services and to fund some of that work. That is a different circumstance to an agency that seeks funding and then finds a place to go and deliver those services. It is not necessarily to say that one is always better than the other. There is value in both. I think to be assessing those two agencies against the same metric is a mistake.⁷⁸

3.84 Mr Quinlan explained that he was not arguing against competition or to close the market⁷⁹ but that some of the outcomes appeared arbitrary and in the absence of an industry strategy it creates difficulties for community organisations about how best to invest in or support the process.⁸⁰ A view which emerged was that this additional community value could not be captured by a strictly paper based application. The selection process for employing staff, which usually includes an interview, was suggested as an analogy.⁸¹

Committee view

3.85 The committee majority is concerned that the outcomes of the tender process may have resulted in the unintended consequence of the loss to local communities of important social services.

3.86 Not-for-profit providers use government funding to support other more basic services to assist job seekers. They provide a more holistic service to disadvantaged job seekers hindered by barriers to employment such as alcohol and drug addiction and homelessness. Where such organisations which provide important additional community benefits have been unsuccessful in this tender round, the provision of

76 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 6.

77 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 7.

78 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 7.

79 Also mentioned by Mr David Thompson, *Committee Hansard*, 11 June 2009, p. 71.

80 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 12.

81 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 7.

these community services is lost. The committee majority believes it is important that the additional services provided to the community by not-for-profit organisations are recognised in future processes to avoid the disruption and loss of such valuable community services. It appears that the government is unaware of the loss of social capital and community infrastructure as a consequence of distancing itself from partnership arrangements which were a feature of previous government policy.

3.87 The development of the new Employment Services model and the subsequent tender round took place in the context of a new government which came into office with a strong 'social inclusion' agenda, and a commitment to strengthening its relationship with social service providers through a compact with the third sector. The consultations around the new model picked up much of this language from government, focussing on increasing flexibility to meet the need of job seekers and local job markets, and on providing more integrated and holistic 'wrap-around' support. Taken together these factors would reasonably be interpreted by providers as a signal that the government was strengthening its commitment to a 'partnership' model, rather than retreating to a 'classic contract' model.

3.88 The committee majority also notes with concern evidence that some staff of unsuccessful tenderers in the not-for-profit sector are leaving the sector altogether as a result of the treatment through the recent tender process. This potential loss of skill and experience is a matter of concern in the current economic conditions with increasing numbers of unemployed requiring assistance.

