

Submission to the Senate Enquiry on the Administration and Purchasing of Disability Employment in Australia

Thank you for the opportunity to make this submission to the Senate Enquiry on this very important matter.

The organization that I represent as CEO is a Disability Employment (Employment Support Service) that has been operating for many years in the Kimberley Region of Western Australia.

It is my perception that the Honorary Mark Arbib who deferred the Governments decision to put the sector to open competitive tender in 2009 may have been led to feel that in hindsight his decision was not the best decision from a Government perspective: and secondly it is my perception that the Honorary Kate Ellis may be committed to driving the sector to open Competitive tender partly with the motivation that she will not be the Minister who repeats this perceived error. It is my hope in writing this submission that the Senate will discover that the decision that Minister Arbib made was very much the right decision and in light of the current debate that the same decision is the superior decision today for Government and for all Australian's.

Please find my submission in the form of an address to the terms of reference as follows:

1 (a) the impact of tendering more than 80 per cent of the current DES on the clients with disability and employers they support under the current contracts;

1.1 (Impact on clients of DES Providers)

It is important at the outset to paint an accurate picture of a typical DES – ESS client (In our case in a WA & Kimberley context). Approximately 50% of the clients of our service are Aboriginal people who at the time of referral are on a Disability Support Pension as a result of their health condition. A very minimal percentage of these referred clients have a strongly educated background or any recent history of sustained work experience. Our clients are also significantly affected by their disability, fearful of change and face other multiple challenges, which are not normative in non-Aboriginal Australian society.

In general at the time of referral our clients as a whole group are finding it difficult or impossible to gain employment; in fact many are not even trying at the time of referral. There are frequently many barriers that need to be bridged before the client is in a position to commence any employment. Our clients' ages range from 15 to 60+. The majority clearly have potential to contribute to society through employment given enough preparation, guidance, support and the opportunity.

It has long been the catch cry of the sector that we do not focus on our clients disabilities but on their abilities and untapped potential. The reality of many typical clients of our service is that their potential is untried at the time of referral; and hence the overarching approach of DES services like ours has been that 'anybody who wants a go gets a go.' This approach is being severely threatened in the current crisis with 80% of the sector being branded as "under performing" and having their business put up for open competitive tender.

The impact of putting 80% of current DES contracts up for tender is already being felt by the clients of these services. In our case for example one client's parents following Minister Ellis budget announcements pleaded with us to address Government as she was concerned that her son's access to the same level of service would be impacted by Governments current direction:

Kimberley Personnel Feedback Form

01/07/2011

I wish to let the government know how important Kimberley Personnel has been, playing an important role in my autistic son's life. My son was one of those children born in the late 1980's who fell through the cracks- due to the lack of government services in Broome. He was only diagnosed with autism two years ago. He is now 24 years old. Kimberley Personnel has been helping set life goals and achieving them, this cannot be done overnight, not even in a year. Autistic people march to the beat of their own drum, but with the right mentors and services to help them, they can achieve the same goals as "normal's". Kimberley Personnel is vital to my son's ongoing well being.

Yours Sincerely

It is also likely that 80% of the clients' of Disability Employment services are already being impacted by the level of "performance anxiety" being experienced by the 80% of DES Providers in the firing line. With each DES Providers security of tenure being determined by their performance against the program KPI's there is immense pressure to achieve an above average level of outcomes in the shortest possible time. There is no doubt that clients of many services are noticing a qualitative change in the way DES is being delivered in the current climate. This is very likely to erode the relationships which frequently underpin a DES clients' confidence to step out of their comfort zone and step out into the wide world of open employment.

Many providers are likely to be abandoning their support of medium to long term pathways that would have taken a client towards a "best possible" long term role in the interest of placing clients more quickly into Disability Employment enclaves and other more menial roles.

Of course the most significant side of putting 80% of the DES sector up for tender for jobseekers' and workers affected by disability will impact where existing providers are not successful in the tendering process. The clients of those services will be extremely affected. For example after changes of staff internally in our operations the most common feedback we receive from our clients is that they don't like the fact that they have to build up a trusting relationship and rapport with a new staff member. This situation will be exponentially worse where the service is closed and clients are to transfer to a new provider. It is also of note that many of the conditions that affect typical DES client's affect them in such a way that "change" is not easy for them, for example Autism spectrum disorders. For employed DES clients with high support needs who's service is discontinued through the tender process it is anticipated that there is a serious possibility that their employment may not survive the change of provider; it goes without saying that this will cause major disruption for the employer as well as the individuals and their families.

This situation will be exacerbated in the extreme by the fact that services will be affected by staff turnover and difficulty filling positions while the future of the organization is affected by uncertainty of tenure. This is a very real dilemma for regions like the Kimberley where the cost of living is high and people need to have some assurance that their jobs are secure..

Another impact of putting 80% of the sector's business to open competitive tender will be the amount of resources that a provider will have to pour into the tender process. It is inevitable that the resources being channeled into the tender process will be channeled away from supporting the clients of the services affected and away from the professional development of service staff.

In short, the impact of putting 80 % of the sector's business up for open competitive tender is already impacting upon clients of DES Providers across the country and the impact will definitely escalate post March 31st 2012 and then exponentially post March 31st 2013. Likely impacts will include loss of employment of people affected by disabilities; unwillingness on the part of many jobseekers to continue to engage with new providers; and the affects of a general movement away (in the changing landscape) from known service providers that are focused on providing quality and understanding services to services that are more mechanical and under pressure to just move people through in a minimal timeframe regardless of placement quality or individual circumstances.

1.2 (Impact on employers of DES clients)

The DES ESS business is relational by nature due to the extra effort that is frequently required to gain opportunities for people affected by disabilities. DES ESS providers have made it their business to promote "corporate responsibility" in Australia by building relationships with employers and supporting them to put their equal opportunity policies into action. Fostering these relationships and growing them to the

required level to develop ongoing employment programs with employers requires time and stability.

Another factor of significance is that in many cases DES ESS providers have developed programs with employers that are quite complex and innovative, for example school to work transition programs for students affected by disability (eg. The SWEAT Program currently run by Edge Employment Solutions in Perth WA).

Putting more than 80% of the current DES to tender especially as framed in the Governments current procurement rationale ('those providers performing at 3 star's or below at 31/03/12 will have their business put up for tender') actually constitutes a very real threat to 80% of these relationships with employers (probably in the tens of thousands) and to the programs that currently exist.

DES ESS providers have absolutely no guarantee of their future existence as DES ESS providers if they are not operating in the above average range and so it follows that nor do the relationships that they have developed. Considering the additional complication of the current short nature of DES ESS contracts the 80% tender move is also very likely to impact on the future of many of the larger programs that providers develop once relationships are established, particularly with larger employers. The willingness of employers to partner with DES providers to run smaller or larger programs is very likely to reduce given the climate of increased risk that a service may not be around to continue the program beyond each successive contract round.

In fact the Governments current move to put 80% of the sector to tender effectively sends a strong message of uncertainty regarding the DES sector that is bound to cause reluctance for employers to engage with the sector and therefore has potential to significantly undermine the sectors efforts. Employers who have had a relationship with a DES provider that is not successful in the tender process will very likely be less confident in the sector going forward.

Considering the number of employment services that will have to go through this process (approximately 520 Providers servicing 75000+ clients across the country) the disruption to employers of DES clients will be widespread and will likely undermine the future success of DES ESS to get employers on board.

2 (b) the potential impact of losing experienced staff;

This is a very real and unsettling reality for providers of any service where the future of the business is clearly not able to be guaranteed by the employer. The staff in our service are already asking questions as they follow the news. At least one Managing Director of a DES Provider in Regional WA that I know of resigned even prior to the Budget, she being convinced that this is the direction that Government would take; it is also of note that she is now employed as a senior administration person in the resource sector. These scenarios will certainly increase once 80% of providers move into the tender phase.

It is also of note that the staff that work in the DES sector are frequently there because they desire a “people helping role,” they are frequently not motivated by large income’s or to climb a corporate ladder. These are people who will not likely move from a DES to a JSA for example due to the less personal nature of JSA service and the great positive change that DES workers are able to effect in the lives of very marginalized Australians. While DES is an employment service like JSA it is very distinct in the way it operates and especially in the motives that drive those who work in it.

When the Personal Support Program was discontinued the procession of people out of the sector did not wait for contracts to conclude. Of similar significance with the ending of the CDEP program there has been a steady exodus of staff particularly at the Management end of those businesses. While the DES program is not ending per se the impact is likely to be similar in part as a result of the sheer stress created by the Governments Budget announcement. With the Budget announcement affecting 80% of DES providers that constitutes a lot of experienced, trained and passionate staff who will be forced to rethink their employment.

The Budget announcement regarding DES ESS Procurement has already had an insidious and difficult to manage affect on morale in other ways. One of these factors lies in the implication that anything below 4 and 5 star performance equates to “under performance,” regardless of the hard work being undertaken. This is particularly true in more challenging parts of the market for example here in the Kimberley Region of WA.

The reality is that while the Government seeks higher performance from it’s DES providers one of the greatest impacts on performance that I have experienced is staff turnover. The loss of trained experienced staff creates a considerable lag in an organizations service delivery effectiveness. This fact is greatly exacerbated in the regional areas of Australia where it is considerably harder to recruit and to retain experienced and trained people. It also presents a bitter irony for DES providers that instability and turnover of trained experienced staff generally has a negative impact on contractual performance, particularly among smaller providers.

3 (c) whether competitive tendering of more than 80 per cent of the market delivers the best value for money and is the most effective way in which to meet the stated objectives of:

- (i) testing the market,*
- (ii) allowing new ‘players’ into the market, and*
- (iii) removing poor performers from the market;*

3.1(Testing the Market)

The Governments desire to “test the market” is a statement that is hard to address as a term of reference for this enquiry based on the simple fact that Government has not stated what the market is being tested for? However given the massive and irreversible

disruption inherent in putting 80% of the DES “market” to open competitive tender it is an incredibly extreme way of achieving a market test.

It also begs the question has the Government seriously considered whether the Disability Employment Service Sector in Australia should be viewed purely and simply as “a market.” While the delivery of Government Employment Services is a contract the provision of which is the responsibility of Providers, it is clear from history that the Disability Employment sector was brought into existence to meet a human need and not directly an economic one (Disability Services Act of 1986). The provision of Employment Services for people affected by Disabilities is essentially about the inclusion of people affected by Disabilities in mainstream society through participation in “open employment.”

Since the Disability Employment Sector moved under the control of DEEWR there has been increasing concern (within the sector) that the sector is being put under increasing pressure to lose it’s distinction from mainstream employment services. This has never been truer than in the current situation particularly with reference to the KPI’s being used to measure performance and as a guide for future service contract procurement. It is in my opinion imperative that the distinction between Disability Employment Services and mainstream employment Services be transparently re-examined and clearly understood in it’s historical context; until this is done pursuing the stated objectives of ‘testing the market’ and also of ‘allowing new players to enter the market’ is at best a high risk exercise and at worst will do great damage to an entity, which Australian’s called into being to make Australia a better place for people affected by disabilities.

As far as bringing any economic benefit it is clear that for the 80% of the market who will need to tender to continue to operate it will be an expensive exercise. The reality being that to write a successful tender an organization will need to pay for the services of a competent competitive tender writer; for smaller agencies this is likely to be a burdensome cost. The Government must also administrate the tender process at their cost. While Government may insist that these extra costs are short term and therefore that an argument against open tender procurement on this basis is invalid I would like to know how certain they are that pursuing the current course will truly bring about any improvement. Given that a market test is after all a test, typically done with a representative group as a trial to gauge the viability of a proposed enterprise it is a radical jump to put 80% of the DES sector to open competitive tender and call it a market test.

It is also of interest how the open competitive tender process can bring future economic benefits. Presuming that the Disability Employment Service Model continues to be case based funded, the economic benefit to Government is really in the hands of Government. For example: If the Government engages the same quantity of service providers and the market size is kept static then the cost will remain equitable except for the cost of the tender process; if the number of service providers increases and number of clients serviced increases then the net outcome will be greater cost; even if the number of providers engaged is reduced and the number of clients serviced remains static then the cost should stay static. There are obviously many possible scenarios, however the value

for money delivered by putting 80% of the sector to open competitive tender is more likely to be decided by whatever outcome Government has decided in advance that it wants. To my way of thinking this invalidates any argument that the stated objectives can bring any economic benefits whatsoever.

3.2 (allowing new 'players' into the market)

It is highly questionable whether this second stated objective for putting 80% of the DES sector to open competitive tendering warrants the level of disruption that will be caused to the sector, the employers and the many Australian people affected by Disabilities. The stated objective of allowing new players into the market also comes alarmingly close to having a "cart before the horse" implication when placed side by side with the stated objective of testing the market; especially where we are talking about 80% of the sector.

While it is a common general principal that some competition can be good for a business it is my observation that this is not the case in Employment Service Provision. It is of note that in the values driven DES sector there is a lot of cooperation, knowledge sharing and encouragement; however even this positive aspect tapers off very visibly between agencies that provide service in the same areas. Speaking about when JSA was moved to open competitive tender former Job Futures director Uri Windt speaks of the impact on the Community-based part of that sector: 'Community-based organizations could no longer cooperate and their own survival was more important than anything else. The idea of "community sector" became a nonsense because the organizations didn't see themselves as a community and didn't look to the survival of all, or to the strong helping the weak ' In the JSA sector today the observation of Uri Windt definitely rings true, it is very much a "dog eat dog" world.

It is fairly clear that those organizations most likely to tender for DES ESS business put out to open competitive tender are either existing DES ESS providers seeking to expand their business or more likely current JSA providers.

In a sparsely populated region like ours a typical JSA might have 450 jobseekers attached to it's Broome site, whereas the typical DES ESS provider here might have 35. It doesn't take a genius to see that allowing a new player into the market will affect the viability of the DES ESS provider even if they were successful in the tender process. The typical DES ESS provider has been present in the region for 20 years, has good relationships with those affected by Disabilities, their families, employers, the community and the various other support services. The vision and mission statement of the typical DES ESS provider surrounds their provision of Specialist Employment Services to people affected by Disabilities.

Speaking in the past tense of the introduction of competitive tendering in JSA: Uri Windt, says that: 'Many in the sector saw the introduction of a competitive tendering process as an attempt to weed out small, local employment service providers and concentrate the services in the hands of large institutional players like the Salvation Army and Mission Australia, while also opening the door to the private sector. What Howard did was change

a paradigm,' says Uri. 'We went from a large number of small players to a small number of large players. The end result was that independent types, small localized suburban entities, did not have a place in the sun.'

The biggest issue of all with allowing new players into the market actually gets back to understanding why Disability Employment Services came into being in the first place; and also in having a clear understanding of what the distinction between DES and mainstream employment services is before even considering allowing new players in. The connection between the Disability Services Act of 1986 and the current employment participation driven DES model seriously needs to be re-connected if it is to be said that the Government is truly "reforming" the sector.

3.3 (removing poor performers from the market)

The term "poor performers" is another expression that warrants further investigation before it can be seriously used as a reason to put 80% of the sectors business to open competitive tender. For further detail see the discussion under 4.1 below concerning the performance measurement system and how it measures performance against the National Average of sector performance.

It is clear that there is no place in the sector for consistently "poor performing" providers, however given the level of disruption, and the shift to the dog eat dog environment that Open Competitive Tendering creates surely putting 80% of the sector to tender is not the best way to manage this problem? Removing "poor performers" by putting 80% of the sectors business to open competitive tender is also a very negative and heavy handed approach. With Employment Service Contracts being "Contract Managed" by DEEWR areas of underperformance are very efficiently identified and should also be very treatable. Where the "poor performer" is clearly not making improvement appropriate action can be taken at a contract level.

One positive approach that was taken historically was the temporarily instated a capacity building fund for providers who were underperforming (in the previous DEN contract) when the New DES contracts were rolled over in 2010. Admittedly there were very few experts available at the time because of the radical nature of change that was brought in with the New DES model. The sector was at that time desperately trying to adapt to the new model as were DEEWR's Contract Management and even helpdesk staff. The Capacity Building Fund made \$11000 available for providers who'd been operating at 2 star's or below under the old DEN contract to help them improve their performance moving into the New DES. Remembering what an awful time that was for providers it is not surprising that the uptake of the fund was slow and I am not aware of the actual impacts on performance (although ironically I suspect that it might still be a bit soon to judge). Having said that the idea was good and constituted a positive and constructive attempt to give "poor performers" the opportunity to improve their performance. Interestingly what the fund did do was launch the careers of consultants who unpacked the finer points of the contracts KPI's and compliance requirements and who are now available to assist providers to improve their performance. While I would never suggest

that the Government should continually fork out money to providers who are not cooperative, I still believe that this sort of approach would be a more equitable solution for a sector like DES ESS.

It is also true that a more flexible limited competitive tender process could be used where servicing gaps exist or where a clearly and sustained underperforming provider needs to be replaced after a performance management period has not effected results. This would be a much more efficient process and would much better meet the stated objectives of the current tender announcement while minimizing the disruption of tendering the full 80 %.

4 (d) whether the DES Performance Framework provides the best means of assessing a provider's ability to deliver services which meet the stated objectives of the Disability Services Act 1986 such as enabling services that are flexible and responsive to the needs and aspirations of people with disabilities, and encourage innovation in the provision of such services;

4.1 (whether the DES Performance Framework provides the best means of assessing a provider's ability to deliver services)

The DES Performance Framework looks very similar to the previous DEN Performance Framework; however the reality is that there are some subtle differences, which have quite harsh implications for DES providers. Industry peak body ACE WA presented a paper highlighting these differences (see overleaf)

‘Under the current DES-ESS contract, the performance KPIs have changed quite significantly and are more focused on speed of performance rather than quality sustainable outcomes aimed at improving the standard of the consumer’s life.

Old KPI's:

Employment assistance

(NB: weightings are separate)

KPI 1: Efficiency

Retention between DPI and 12 months	(5%)
Retention between 12 and 18 months where no outcome	(5%)

KPI 2: Effectiveness

13 week employment outcome	(30%)
26 week employment outcome	(40%)
VET 13 week outcome	(5%)
Average hours per week in work (higher better)	(5%)
Average weekly wage from work (higher better)	(5%)
12 month employment status	(5%)

Workers in Maintenance

(NB: weightings are cumulative)

KPI 1: Effectiveness/Efficiency

Remain in employment and leave maintenance	(10%)
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KPI 2: Effectiveness

Remain in employment – same or better earnings	(30%)
Remain in employment	(60%)

KPI 3: Quality of Disability Open Employment services (pass/fail)

When we compare these KPIs to the present, which are set out below, you can see that the main differences are the scrapping of the average hours of employment, average weekly wage and the 12-month employment status. These have been replaced with commencement to referral ratio, time taken to achieve full 13-week employment outcome, job placements and the proportion of commencements that are placed in employment (excluding school based placements), meaning that sustainable quality outcomes have been replaced by speed and volume.

CURRENT KPI'S

KPI	Performance Measure	ESS Weighting
	Efficiency	
1.1	Commencement to referral ratio Proportion of referrals who commence in the program	5%
1.2	Time taken to achieve full 13 week employment outcome Average time from commencement to the anchor date of a 13 week Full Outcome for employment	5%
	Effectiveness	
2.1	Job Placements Proportion of commencements that are placed in employment	5%
2.2	13 week Full Outcome Proportion of commencements that achieve a 13 week Full Outcome	20%
2.3	13 week Pathway Outcome Proportion of commencements that achieve a 13 week Pathway Outcome	5%
2.4	13 week Bonus Outcome Proportion of participants who achieve a 13 week Bonus Outcome	5%
2.5	26 week Full Outcome Proportion of commencements that achieve a 26 week Full Outcome	30%
2.6	26 week Pathway Outcome Proportion of commencements that achieve a 26 week Pathway Outcome	5%

2.7	<p>26 week Bonus Outcome Proportion of participants who achieve a 26 week Bonus Outcome</p>	5%
2.8	<p>Ongoing Support Proportion of ongoing support participants who remain in employment or exit ongoing support as an independent worker</p>	15%

As highlighted in the quoted section of the ACE WA document the difference is subtle but effective in reducing the performance of providers who have focused on achieving higher quality outcomes for example following a pathway of pre-employment training and systematic reduction of identified barriers before placing the client into the employment that the client most aspires to (this maps to Disability Standard 3 – Decision making & Choice).

It is a critical point in addressing this term of reference that the DES sector did not see their performance against the KPI's and derivative star ratings after entering the New DES contract in March 2010 until February 2011. Then it was only in May 2011 that the Minister announced that the DES sector would be put to open competitive tender where providers were not in the above average star rating bandwidth (4 & 5 star). This has given the 80% of providers who have not achieved above average performance very little time to review their performance against the new KPI's with a view to improvement.

(This discussion is pertinent to 3.3 and paragraph 1 above) The environment this has created for DES providers is one of extreme pressure to improve performance. I can say with confidence that the majority of providers are working quite diligently to improve their performance tailored to the KPI's. The problem is that the Star ratings that measure a Providers performance against the KPI's are measured against the National Average Performance of all DES providers. Hence what is currently happening is that the 80% of Providers are in fact improving significantly in their desperate attempt to be counted as above average; however the net effect is that the National Average is being continually pushed up. It is clear from the very visible rise in the National Average since the Ministers Budget announcement re. DES Procurement that as a whole the Sector has improved it's performance significantly!

The sad dilemma is that the net impact on the 80% of DES Providers who were deemed below average is that they are likely to be kept below average by their own efforts. At capability sessions provided in August 2011 by DEEWR to DES Providers not counted in the above average performance band it was strongly stated that to achieve above average performance in the timeframe providers would need to achieve an extraordinary improvement. It was also made clear that above average provider performance could only be achieved against the KPI's by getting a significantly above average number of job placements up until March 31, 2012. Undoubtedly to achieve this any consideration of how, where or of what quality will be at risk of going out the window.

The above discussion illustrates the fact that the current KPI's used to measure DES ESS provider performance may not actually be a valid tool to brand providers as underperforming at all as evidenced by the steady increase in the National Average! The same could apply to the validity of the Key Performance Indicators as being a suitable indicator of which services should have their current business put up for open competitive tender.

In short the Governments procurement announcement in May 2011 only 3 months after the first star ratings release since the contract commenced is premature at the very least; and the focus that the Governments criteria for contract rollover has put back on the KPI's has clearly highlighted that there are some critical problems just below the surface of the KPI's. The real incongruence of the KPI's is to be found in their clash with the Disability Service Standards and the lack of fit with the Job Capacity Assessments, which effect referrals to the DES – ESS Program (See 4.2 below)

4.2 (Whether the DES Performance Framework provides the best means of assessing a provider's ability to deliver services which meet the stated objectives of the Disability Services Act 1986)

In my opinion this is the critical problem in the current DES model, particularly the KPI's, which have made DES ESS providers the meat in the sandwich between the KPI's and the Disability Service Standards. This situation has been amplified considerably by the Budget announcement, which states that Providers who have not achieved 4 stars of performance or above by 31/3/2012 will have their business put up for open competitive tender.

The KPI's as already mentioned reward providers who get new DES ESS referred clients from commencement in the program to a 26 week outcome in the minimum possible period of time. On the surface this looks sensible enough. The trouble is that conversely the KPI's are punitive where this rapid flow through is not achieved. For example the KPI's start to calculate negative performance figures where job placements or outcomes are not achieved in the shortest possible timeframe. If it were simply a matter of rewarding good performance and punishing poor performance this might be reasonable albeit perhaps a little inflexible.

The problem becomes apparent however when the format of the Job Capacity Assessment is brought into the picture. The Job Capacity Assessment (JCA) actually identifies the barriers that the client will need to overcome in the move to open employment and suggests not only interventions that the provider might apply but timeframes. It is quite common in the referring JCA's that we see in our ESA that the barriers/interventions are multiple for many jobseekers. Frequently "obtaining or maintaining open employment" is recorded in the JCA as a barrier with the suggested timeframe for overcoming the barrier being up to 2 years plus with support and intervention by the provider (see sample 1 overleaf)

Sample 1.

Support Requirements	
Requirement: Communicate with others	Duration: 12 to 24 months
Requirement: Complete job search activities	Duration: 12 to 24 months
Requirement: Concentrate or remain task focused	Duration: 12 to 24 months
Requirement: Learn new tasks	Duration: 12 to 24 months
Requirement: Maintain learned tasks	Duration: 12 to 24 months
Requirement: Maintain sustainable employment	Duration: Longer than 24 months
Requirement: Understand and follow instructions	Duration: 12 to 24 months

Based on the level of support required the client requires specialist disability employment interventions.

The client is best suited to DES - Employment Support Service.

Work Capacity

Baseline Work Capacity: 0-7 Hours per week

(Excludes any temporary impacts noted above)

Rationale: Client's work capacity significantly limited due to the impact of permanent medical conditions that are fully diagnosed, treated and stabilised. Client experiences symptoms such as a limited ability to concentrate, difficulty with persevering with a task, as well as poor literacy and numeracy skills. The MR states that the current impact of this condition on the client's ability to function is expected to persist for longer than 24 months. It is not expected that the client will be able to undertake full time employment in the open labour market during this time.

Suitable work: Not Applicable

Capacity for work within 2 years with Intervention: 8+ Hours per week

Rationale: Client's work capacity significantly limited due to the impact of permanent medical conditions that are fully diagnosed, treated and stabilised. Client experiences symptoms such as a limited ability to concentrate, difficulty with persevering with a task, as well as poor literacy and numeracy skills. The MR states that the current impact of this condition on the client's ability to function is expected to persist for longer than 24 months. It is not expected that the client will be able to undertake full time employment in the open labour market during this time.

Customer has a Future Work Capacity of 0-7 hours per week with intervention but can achieve 8-14 hours per week with an ongoing program of support from Disability Employment Services.

Suitable work: Moderate less skilled (W06)

Examples: Stock Filler

Capacity for work within 2 years without Intervention: 0-7 Hours per week

Rationale: Client's work capacity significantly limited due to the impact of permanent medical conditions that are fully diagnosed, treated and stabilised. Client experiences symptoms such as a limited ability to concentrate, difficulty with persevering with a task, as well as poor literacy and numeracy skills. The MR states that the current impact of this condition on the client's ability to function is expected to persist for longer than 24 months. It is not expected that the client will be able to undertake full time employment in the open labour market during this time.

While this example does not represent the paradigm of all jobseekers referred to DES ESS it is true of many DES ESS referrals in our ESA. Sample 1 is also a direct cut and paste from the JCA with references to the individual's identity removed.

What this means for DES ESS providers is that to maintain above average performance against the KPI's providers are under considerable pressure to exclude referred clients who are not likely to achieve a reliable employment placement in less than 13 weeks from commencement in the program; and it follows that for a DES ESS Provider to pursue the course of excluding any potential client from access to the program because they are likely to take too long to achieve an employment outcome is to contradict Service Standard 1 (Service Access), Service Standard 2 (Individual Needs), Standard 3 (Decision Making and Choice), Standard 4 (Privacy, Dignity & Confidentiality), Standard 5 (Participation and Integration), Standard 6 (Valued Status) and possibly Standard 12 (Protection of Human Rights and Freedom From Abuse).

The Performance advice being given to DES Providers by DEEWR in the interest of improving their performance against the KPI's reinforces the fact that the abovementioned practice is the smart approach under these KPI's. The advice being given includes: Exiting referred clients who are volunteer jobseekers at their initial interview where they are likely to take too long to achieve outcomes; Exiting or suspending commenced clients prior to 13 weeks in the program if they have not achieved an employment placement, and exiting or suspending clients who have not sustained employment prior to 26 weeks in the program. The advice that is being given is undoubtedly the right advice for achieving improved performance against the Program's KPI's however when it comes to the ethics of following this advice and maintaining compliance with the Disability Service Standards the dilemma becomes quite vivid.

Another suggestion for performance improvement is that if DES Providers feel conscionably obliged to work with more difficult referred clients then they should consider ways of working with them external to the DES Program until their barriers to employment have been removed. It is quite clear under the DES model/KPI's that this is the only way to follow the Disability Employment Standards, however the implications for service viability are also quite clear.

One Managing Director of a large, reputable and long serving DES ESS provider stated in the "underperforming" DES Provider Capability Session in Perth this August: that their organization would not compromise performance for quality; she also stated that they had strategically aimed for 3 stars of performance for that reason. It was clear that from that MD's perspective (having 25 + years in the sector) that the DES ESS KPI's are in collision with the Disability Employment Standards. It is clear that the unacceptable average and below average performance of many providers may actually be a reflection

of their awareness of the conflict between the DES ESS KPI's and the Disability Service Standards and not truly poor performance at all.

If there's one thing that can be said with absolute certainty it is that the DES ESS KPI's do not even attempt to measure a provider's performance against the Disability Employment Standards. The Disability Service Standard KPI is treated in the model in a pass/fail way only. The measurement against that KPI is done by an external auditor that measures how the DES ESS provider operates against the standards, The Quality standards have their own KPI's (26 to be exact), DEEWR does not show any interest in the detail of these audits.

To me the indication is that the Government is very keen to drive the DES ESS sector to open competitive tender as it did with JSA. However the DES ESS sector is different for a reason and that has clearly not been considered a priority by Government in recent times in it's decision making regarding the future of DES ESS. Australians affected by Disability require a different approach and Government, in listening to the wishes of the Australian people historically added the Disability Standards to rule over the way DES are delivered for that reason. DES ESS services are in danger of losing this distinction in the Governments rush to move to the dog eat dog world of a competitive tendering environment. It is now imperative that the Governments procurement strategy is placed on hold while the DES ESS KPI's are themselves reformed under the Disability Employment Standards.

I am convinced that if Government initiates an external audit of the KPI's against the Disability Service Standards then recommendations will come forward that if followed will improve the DES model and its KPI's and clear the way forward for the sector by bringing the balance back into services for Australian Jobseekers affected by Disabilities. The Disability Service Standards make the critical point of difference between Disability Employment Services and mainstream Employment Services. In fact it is possible that it is the lack of discussion on this very point of difference that has led to this senate enquiry and therefore it is a critical point of discussion for the enquiry. In my opinion this is the heart and soul of the matter and must be dealt with prior to any plans for procurement can be permitted to proceed. It may also be true that in putting this point of distinction back into it's proper place in the DES ESS procurement discussion that open competitive tendering will clearly be demonstrated to be the wrong approach altogether.

5 (e) the congruency of 3 year contracting periods with long-term relationship based nature of Disability Employment Services – Employment Support Services program, and the impact of moving to 5 year contract periods as recommended in the 2009 Education, Employment and Workplace Relations References Committee report, DEEWR tender process to award employment services contract;

The 3 year contracting periods are definitely too short given the relationship based nature of DES ESS provision. This is particularly so where a tender process is involved and especially when there have been major changes to navigate as in the current contract. In fact with the level of change that has been inherent in the recent move to the current DES

model it is alarmingly difficult for many DES ESS providers to take being branded as “underperforming” and put to open competitive tender so soon. A contract of this nature really needs sufficient time to run and even 5 years is probably the minimum length that would begin to make sense from the service delivery end. What’s more, I can see no risk in a longer contract length for Government particularly with DEEWR contract Management systems monitoring performance etc. It seems very plain to me that under a 3 year contract matched with open competitive tendering providers, particularly small providers are likely to wink out of existence due to the drain on resources, the uncertainty of tenure and the stress that this will bring to the organization.

6 (f) the timing of the tender process given the role of DES providers in implementing the Government’s changes to the disability support pension.

Again there is a an alarm bell in this term of reference, the Governments changes to the Disability Support Pension (DSP), the Governments changes to DES (2010), the Governments changes to DES Procurement and it’s impact on the whole paradigm of the sector, the Governments changes to Centrelink, the Governments changes to Job Capacity Assessments, the Governments changes to the Impairment tables for DSP (2012), the Governments abolition of CDEP.

For every one of these many and multifaceted changes there is a significant impact on the ground. While the Government would argue that these changes are necessary and that the disruptions are temporary there are an awful lot of them in a very short timeframe. This is making it a very difficult time to be striving to improve performance at the service delivery end, while preparing to tender, while trying to understand the implications of the changes and adapt to them all at the same time.

Currently Government has an agenda to reduce the number of DSP recipients by 60%. In our service DSP volunteer jobseekers have been the traditional referral. As a result of the changes to Job Capacity Assessments (JCA) many of these are now coming to us as DSP review cases and while their number and level of barriers are still the same as they always were their benchmark hours is seeing them losing eligibility for the DSP; this also means that the DES ESS provider must get them into more hours of employment (still in the shortest possible time due to the KPI’s) because their benchmark hours are higher. This probably also means that many of these ex-DSP clients will be referred to JSA instead of DES because their impairments are being considered differently even though their impairment hasn’t changed (it is of note that their has been significant leakage of people affected by significant and multiple disabilities to mainstream employment service providers since the advent of stream services). Given that 50% of the clients we see are aboriginal people who in many cases have less understanding of these complex bureaucratic systems and changes, the impact is likely to be quite nasty in deed. A DSP recipient who is reassessed as ineligible once the new impairment tables come in will be up to \$6000 per annum worse off in our region while having the same low level of work experience and the same level of impairments. For many years now our Aboriginal people in the Kimberley have been in the throws of a suicide epidemic. The Derby Hospital reported recently that they currently have to treat up to 6 attempted suicide cases

on any given weekend. The idea that bumping people off a DSP (or for that matter CDEP), effectively reducing their income and privileges and upping their participation requirements is going to create a pool of motivated job seekers is naive in the extreme in a Kimberley context. I am not aware of any safety net in place for these people either.

I am not saying in any stretch that reform and change is not needed however it is not creating a great environment for a tendering process as it will take time for the implications of these changes to become clear with many of them yet to be rolled out (for example: the new DSP impairment tables). It took a minimum of 9 months for the DES ESS sector to get any where near adapted to the New DES model with many of us only really getting a grip on the effects of the KPI's post May 2011. The JCA providers here nearly had to take up knitting after changes in the way Centrelink deals with customers impacted referrals to them. When asked for their opinion on the impacts of the changes one very experienced JCA provider said that they are actually still quite confused about the changes 2 months in.

In light of the KPI's and the pressure on providers to get quick results all the time along with the impacts of so many other changes it is hard to say what the clientele of the service will look like in 6 and 12 months time. In a nutshell I think in light of these many changes it is a truly awful time to have to go up for tender; and considering that the Deed allows for an extension of the current contract for up to 6 years I really don't see the value let alone the sense of rushing the sector to open competitive tender on the currently announced timeframe.

It is also important to note that the Government is also exploring other options for employment service provision in remote areas of Australia, which is as yet inconclusive this also puts uncertainty into the arena for DES providers currently servicing clients in these vast areas of Australia. It begins to beg the question can DES ESS providers particularly in the bush actually be absolutely certain what the business they are tendering for in the current timeframe will even look like.

Conclusion

Improvements to the DES sector should not to be shied away from by providers or by Government; poor performance on the part of DES Providers can also not be tolerated; however as significant shortfalls are clearly identified in the program's design the prudent course of action is to make the first step of the reform process to address the identified shortfalls. In this case I am truly hopeful that when the problems in the programs design are conscionably addressed the value of changing the actual direction of the reform will become clear. The right way forward is to incorporate into the Disability Employment Service model the fact that Australian's want people affected with Disabilities to have a "fair go;" and that causing a major disruption to the sector through open competitive tendering at any time will cause immeasurable damage to this great Australian principal.

It is my recommendation:

1. That the DES ESS procurement as currently announced be delayed till 2015 while reviews and improvements are made;
2. That all current DES ESS contracts be extended to 2015;
3. That the current DES ESS model and it's KPI's (or any as yet unveiled improved model that might be already developed for the next contract) be reformed through an audit and review process against the Disability Employment Service Standards by an appropriate body.
4. That DES ESS providers operating at less than 3 stars have their performance results examined to establish the reasons to inform the provider and DEEWR and then be given a timeframe for improvement.
5. That DES ESS servicing gaps or providers that do not have capacity to continue to provide services be identified and an appropriate strategy to bridge these gaps developed & implemented in a shorter timeframe.
6. That a clear channel of communication be assured for Government to relay any concerns that it has to the sector and vice versa to allow for informed constructive and equitable solutions to be applied for the preservation of a robust & cost effective Disability Employment Service Sector into the future.

Yours Sincerely
Steve Cook
CEO
Kimberley Personnel