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Inquiry: The administration and purchasing of Disability Employment Services in Australia

WORKING FOR
A FAIR AND EQUITABLE
AUSTRALIA

I am pleased to provide the attached submission to the Inquiry on behalf of Jobs Australia, the national peak organisation for nonprofit providers of employment and related services – which include Jobs Services Australia, Disability Employment Services (DES) and a wide variety of other related programs, services and activities.

Over the past eleven years and more, Jobs Australia has developed extensive knowledge and experience of the management, procurement, administration and operation of labour market assistance programs and the public employment service in Australia, and has been closely involved with other peak organisations, the Department and other providers in the design and iterative development of Job Services Australia (and its predecessor, the Job Network) and of Disability Employment Services. With other peaks and provider representatives, we were closely involved in the implementation of the current Disability Employment Services – including the design and refinement of the performance management framework.

As members of the Committee may be aware, Jobs Australia also has considerable knowledge and experience of the implications and consequences of the operation of competitive tendering as a method of procurement of mainstream employment services.

Our broad approach to the issues in question is set out in **Attachment One** to this letter.

In **Attachment Two** comments are provided in respect of each of the Terms of Reference for the Inquiry.

We would be pleased to provide any additional information which might assist the Committee in its conduct of the Inquiry.

Yours sincerely

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27 September, 2011

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Attachment One

Jobs Australia on Future Disability Employment Services - Employment Support Services (DES ESS) Procurement and Contracting

Jobs Australia is of the view that the Government's decisions in relation to the future procurement of DES ESS as announced in the context of the May 2011 Budget, represent a fair, reasonable and responsible approach which is in the public interest, the interests of people with disabilities and those employers assisted through the program.

There is a matter for judgement by the Government as to where to set the bar for the cut-off for less than high performers that will be subject to a competitive tender. Considerations here include the need to minimise disruption and associated performance and transaction costs, and to maximise the chances and likelihood of achieving higher levels of future performance (and especially employment outcomes) for those people with disabilities being assisted by the program. We appreciate the logic behind the government decision announced by Minister Ellis. It is congruent with other approaches to procurement for both Job Services Australia and Disability Employment Services Disability Management Services (DES DMS).

In August 2009, former Minister, Senator the Hon Mark Arbib, determined and announced that then existing Disability Employment Network providers would be offered Invitations to Treat for the delivery of the new Disability Employment Services Program B (now known as Employment Support Services or DES ESS) from 1 March 2010.

Minister Arbib said that 'while the Government is committed to, and believes in, the benefits of competitive tendering as the best way of ensuring job seekers receive access to the highest quality services, it was decided more work needed to be done with the sector to avoid unnecessarily disrupting the lives of job seekers and their families.'

Former Minister Arbib then also announced that eligible lower performing providers would have access to a Capacity Building Fund to help them make a smooth transition to the new model and to improve their performance in terms of employment outcomes for people with disabilities. The subsequent take-up by some lower performing providers of this additional capacity building assistance was disappointingly lower than might have been expected.

In the May 2011 Budget, Minister the Hon Kate Ellis announced that the Government had decided to extend existing DES ESS contracts for a period of 8 months from 1 July 2012 to 3 March 2013 to ensure past performance data was available for all providers. This decision was made in response to suggestions from a number of peak organisations (including Jobs Australia) that it was important that performance data which would be used to inform future purchasing processes was statistically reliable and robust.

Minister Ellis also announced that DES ESS providers performing at 4 and 5 stars under the performance management and ratings system at the end of March 2012 would be offered a contract extension until 30 June 2015, and that services operated

by providers performing at 3 stars or less would be the subject of a competitive tender. It is important to note in this context that ESS (and their predecessor equivalent contracts) have never ever been the subject of any competitive purchasing processes, unlike their mainstream counterparts delivering Job Services Australia contracts (and their predecessors) which have been the subject of a number of tenders and other competitive processes since 1997.

An important further consideration about future procurement processes is that the maintenance (by and large) of the provider status quo over many years has meant the Department has had little or no opportunity to ensure that the right kinds and mixes of generalist and specialist services are being provided in the locations where people with disabilities and employers need them to be.

Lower performing providers have also been offered some additional assistance in the form of capability building workshops being conducted during August 2011 by KPMG.

We fully understand and appreciate that competitive tender processes are daunting and challenging, and can be somewhat disruptive for service recipients (employers and people with disabilities) and for providers. We think, however, that the time has come for a competitive process which will ensure that the best possible services are being delivered, that provides opportunities for high performing new providers to enter the market or to take up new locations, and that removes providers which are unable to deliver the levels of employment outcomes which people with disabilities and taxpayers have every right to expect. Some of the inevitable disruptions to employers and people with disabilities using ESS services in 2013 at the time of transition to new contracts and some new providers will be able to be managed and minimised with careful planning and implementation of transitional arrangements.

Wherever possible the principle of maintaining continuity of service to people with disabilities and employers should take precedence where there is little evidence that new entrants will be able to perform better in that Employment Service Area.

Jobs Australia will continue to focus on assisting our relevant members to enhance and improve their performance and to assist them (and others who might seek to deliver ESS services) to prepare the best possible tenders when the time comes. We will also contribute our views and suggestions to Minister Ellis and to the Department about the framing and weighting of selection criteria for the tender and about consideration of mitigating circumstances concerning levels of past performance.

Attachment Two

Jobs Australia Submission

Inquiry: The administration and purchasing of Disability Employment Services in Australia

The administration and purchasing of Disability Employment Services (DES) in Australia, with particular reference to the Government's 2011-12 budget announcement to undertake a competitive tender of the Disability Employment Services – Employment Support Services program for contracts with a performance rating of 3 stars and below under the Department of Education, Employment and Workplace Relations' DES Performance Framework, including:

(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;

The impact of the tendering process will depend on the ultimate outcome of that process and may not mean that 80% of existing business is lost by existing providers and taken up by new ones. Apart from inevitable anxiety and distraction associated with a tender process, the impact of the tendering process on current clients and employers being supported by providers will depend on the effective and sensitive management of the transition and transfer process where that proves necessary.

The consequence of the process should be more and better employment outcomes for people with disabilities and better and more effective support for their employers – if the parameters of the tender and the associated selection criteria are wisely and properly set. As we understand it, the Government's objective is to achieve higher and better performance than is being delivered by current providers and that necessarily means transferring business levels to new and different providers.

We support that objective and observe that preservation of the status quo for providers in the interests of maintaining existing relationships with clients and employers would not achieve the result the Government is rightly seeking. While it might be possible for some providers to continue to provide support to clients already placed in employment and their employers, there is likely to come a time where this is neither feasible nor financially viable.

(b) the potential impact of losing experienced staff;

As has been the case in the past in the mainstream public employment service, it can be expected that some staff in the poorest performing DES ESS providers will seek to find new employment before the current contracts are completed and often in another occupation. Staff from those providers which are performing at higher levels (but still below the announced cut-off for contract extensions) are likely to be able to gain employment with new providers and those with bigger contracts as a result of the tender process. There is no evidence to suggest that there will be any significant net overall loss of capable, experienced and effective staff as a consequence of the tender process.

(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;

The proposed tendering process will test the market in terms of interest from new, different and potentially higher performing providers, especially given there has never been any opening of the 'market' through any form of competitive process based on performance in delivering employment outcomes.

Widespread anecdotal evidence would suggest that there is a great deal of interest in the DES ESS tender from organisations which now deliver DES DMS services and those which deliver Jobs Services Australia contracts. It can also be expected there will be some interest from organisations currently not delivering employment services but with substantial capability to do so. This may include overseas-based providers. The proposed tender will also arguably have the result of removing poor performers from the market – a process which should continue during the new contract period with a business reallocation process. Once a competitive process has been undertaken, it should be possible for the Department to iteratively reallocate business from poor performers and, in doing so, to obviate the need for a major tender (and the associated costs) for at least another six years.

The terms of the Free Trade Agreement between Australia and the USA may have some bearing on this as well and might provide for or allow even longer periods between major tenders.

(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;

The DES Performance Framework does not seek to assess a provider's ability to deliver services which comply with the Disability Services Act 1986 – which go to questions of quality of service delivery. Rather, the DES Performance Framework seeks to measure and compare providers' performance in terms of their achievement of employment outcomes, their duration and the time taken to achieve them. We strongly support the current performance management approach which seeks to ensure services comply with the relevant statutory standards, which overlays other measures of quality of service, and which measures and compares performance against the ultimate goal of getting people into sustained employment.

While it remains a work in progress and should be subject to continuous review and refinement (on the possible introduction of measures like hours of work and rates of pay, for example), the Performance Framework is based on extensive experience and ongoing refinement and adjustment in the mainstream employment service, substantial re-engineering for DES, and significant consultation with and agreement from the DES providers, peaks, consumer representatives and advice from external experts. It is widely regarded as world's best practice. Past experience suggests that attempting to measure and compare levels of quality of service can be difficult and

costly and impose undesirable levels of red tape.

(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;

We have not seen any data about the durations of assistance (including provision of ongoing support) of the current DESS ESS client population, but would doubt that there are many cases where a client would require assistance (including ongoing support) beyond the six years which should be possible if the government adopts the same approach to DES ESS procurement and contracting which operates for DES DMS and Job Services Australia contracts. If there are people with disability and/or their employers who need longer-term support or assistance then it will be necessary to implement effective and sensitive transition arrangements to ensure this is achieved.

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

As noted above, there has been a very lengthy period for which there has been no competitive process for DES ESS procurement. The Government has already agreed to requests from peak organisations to implement arrangements (including two contract extensions) to assist poorer performing providers to adjust to the new program arrangements and to ensure that data on which to make comparative assessments of performance is as accurate and robust as possible.

The provision of employment assistance by DES ESS providers to those new applicants for the Disability Support Pension affected by the government's changes to eligibility assessment will present both challenges and opportunities for the providers. In our view, the implementation of those new arrangements does not, of itself, warrant any further extension of existing contracts. The best outcomes for the people with disability affected by those changes will be achieved through the Government removing consistently poor performers and replacing them through the smart procurement of alternative providers which deliver better outcomes.

As noted in Attachment One of our submission, the outcomes of the future competitive tender depend heavily on the design and conduct of the tender itself. Jobs Australia is keen to work with our members, with other provider and consumer peaks, and with the Department to ensure the tender represents close to world's best practice in smart procurement. If that can be achieved, and the 'market' responds accordingly, we expect to witness more and better outcomes for people with a disability. And that is the result we are all looking for.