

**Submission by the
Department of Education, Employment and Workplace Relations**

to the

**Senate Education, Employment and Workplace Relations
References Committee**

Inquiry into

**The Administration and Purchasing of Disability Employment Services
(DES) in Australia**

1. Introduction

The Disability Employment Services (DES) were introduced on 1 March 2010 to increase the participation of people with disability.

At this time, the Government uncapped access to the services, providing all eligible people with disability immediate access to the service they need. The introduction of DES also included an increased focus on employment outcomes and on education, training and skills development.

After 18 months of operation, the new services are achieving good results. There has been a 41 per cent increase in the number of people accessing help to get a job, with DES participant numbers rising since the start of DES to over 146,000 at the end of August 2011. At the same time, the number of sustainable jobs has increased with the number of DES job seekers placed into a job for at least 13 weeks is 51 per cent higher than under the former programs.

However, the results achieved still fall short of community expectations and can be improved. Historically, Australia has not performed well in assisting people with disability to benefit from employment.

In 2009, the Australian Bureau of Statistics found that the workforce participation rate of people with disability was 54 per cent, compared to 83 per cent for people with no reported disability.

In 2010, the Organisation for Economic Co-operation and Development (OECD) reported¹ that Australia was ranked 21 out of 29 countries in terms of employment participation for people with disability.

¹ *Sickness, disability and work: breaking the barriers – OECD Report, 2010.*

To improve participation of people with disability, DES was developed through a comprehensive consultation process with people with disability and their representatives, employers and employment service providers. DES, which replaced the former Disability Employment Network (DEN) and Vocational Rehabilitation Services (VRS), comprises two components:

- Disability Management Services (DES-DMS) - for job seekers with disability, injury or health condition who require the assistance of a disability employment service but are not expected to need long-term support in the workplace; and
- Disability Employment Support Services (DES-ESS) - for job seekers with permanent disability and with an assessed need for more long-term, regular support in the workplace.

In the period leading up to 1 March 2010, DES-DMS was subject to a market testing exercise. The Government quarantined approximately 55 per cent of available business for CRS Australia. Remaining business was put to open tender. The successful tenderers and CRS Australia were contracted to provide services for the period 1 March 2010 until 30 June 2012, with options for the Government to extend contracts by up to six years.

The Government has determined to exercise its contractual rights and extend DES-DMS contracts for the period until 30 June 2015, reflecting the market testing exercise that occurred in 2009.

DES-DMS is outperforming VRS, the program it replaced, in all primary disability groups. It is reasonable to assume that this is a result of the competitive tender as DES-DMS is not materially different to VRS in a policy sense.

The picture for DES-ESS is somewhat different, with modest improvements in job placement and outcome rates for some groups and reduced outcomes for others, compared with DEN (the program it replaced).

DES-ESS did not undergo a competitive process in 2009. Rather, during 2009 existing providers were engaged to deliver DES-ESS via an Invitation to Treat (ITT) process. This process allowed providers, irrespective of performance, to continue delivering employment services for people with disability without the need to tender.

As such, there was no opportunity in 2009 for new providers to enter the DES-ESS market, nor was there any opportunity for existing providers to compete for additional DES-ESS business.

The purchasing arrangements for DES-ESS that were announced in the 2011-12 Budget are aimed at ensuring that people with disability have access to the highest quality services. These purchasing arrangements include tendering the business of

one, two and three star providers² in non-remote areas of Australia. Providers with a performance rating of four or five stars will be offered a three year extension to the term of their current Deed, rewarding their outstanding performance.

These purchasing arrangements mean that, for the first time, average and poor performing DES-ESS providers will be required to demonstrate their capacity through a competitive tender. As noted previously, DES-DMS has recently undergone a tender process. Additionally, mainstream employment services like Job Services Australia regularly test provider ability to deliver quality services and outcomes through tender processes. By contrast, nearly 200 DES-ESS providers have never been subject to a competitive tender.

The Government's announcements on DES purchasing followed a consultation process that commenced in December 2010. The feedback from stakeholders on DES-ESS purchasing arrangements was varied, ranging from those who supported a full immediate tender of the services to those who advocated contract extensions for all providers regardless of performance.

Australia's competitive employment market is a pioneer in the field of government-funded employment services. The OECD has noted that:

"A key concern in building a private, for-profit provider market is the quality of services delivered and the need to ensure continuous quality improvement. Australia offers an example of good practices in this area:

- *Through its comprehensive Star Rating performance management system, Australia has gone furthest in monitoring the performance of service providers. A good rating is crucial for a provider to be included in the next round of tenders and thereby stay in the market. Employment outcomes for more difficult clients would raise the rating, for instance.*

"Competition is a strong tool for better accountability and, to a degree, also quality. In this sense, in countries outsourcing employment and rehabilitation services to private companies the competitive tenders themselves can contribute to overcoming some of the quality risks involved – as long as the government manages well the bidding process; monitors and assesses the performance of the providers; and feeds the results back to the contract extension or renewal." ³

Australia's experience in establishing a fully contestable market for publicly funded employment services dates back to the introduction of Job Network on 1 May 1998. A comprehensive three-part evaluation found that access, user satisfaction, and cost effectiveness all improved under Job Network. The evaluations concluded that competitive tendering has been a major factor in delivering value for money and, through this, better access for job seekers and employers.

² Based on the Star Ratings as at 31 March 2012.

³ *Sickness, disability and work: breaking the barriers – Chapter 6, OECD Report, 2010.*

“The introduction of Job Network saw both increased employment outcomes and lower unit costs, resulting in a substantial fall in the cost per employment outcome.”⁴

The evidence of competitive tendering for the range of employment services supports the approach as an effective means of allowing potential higher performing providers to enter the market. For example, the Job Network evaluation found that the average performance of providers in the first contract period that gained contracts in the second contract period was 25% higher than the overall average performance of providers in the first contract.

Competitive tendering offers incentives for providers to better their performance, leading to more outcomes for jobseekers.

As well as addressing the Inquiry Terms of Reference, this submission provides contextual information about the administration and purchasing of DES. The submission outlines the legislative framework that underpins the future purchasing arrangements for DES, background to the delivery of DES, evidence that supports the purchasing approach, and information on the DES performance framework.

2. Legislative Framework for DES

Funding for DES is provided under the *Disability Services Act 1986* (the DS Act). The DS Act sets out the arrangements under which the Commonwealth may deliver various services for people with disability, including employment and rehabilitation services. The DS Act also contains the Disability Services Standards, which are designed to ensure that a high standard of service delivery is provided for DES participants. The DES program and performance management system has been designed to be consistent with the DS Act and the Disability Services Standards.

The Disability Services Standards cover issues such as privacy, dignity, value and employment conditions of a person with disability, and the skills and training for staff working at a DES. All DES providers must be certified as meeting the Disability Services Standards in order to receive funding to deliver DES on behalf of the Government. Independent auditors from accredited certification bodies certify each DES provider against the 12 Disability Services Standards and 26 associated Key Performance Indicators. The certification system forms part of the DES performance framework, which is addressed in more detail in section 5 and Attachment E of this submission. The objectives of the DS Act and more detail on the Disability Services Standards, including the certification system are set out in Attachment A.

⁴ Active Participation Model Evaluation July 2003-June 2006: Figure 9.9; workplace.gov.au - Active Participation Model Evaluation

2.1 The Commonwealth's Financial Management Framework

In addition to the DS Act, which establishes the legislative basis for DES, the Commonwealth's financial management framework is also relevant when considering the way DES is procured and managed.

The financial management framework underpins the appropriation, expenditure and use of money and resources within the Australian Government. It operates alongside any other relevant legislation, such as the DS Act. Within that framework, DES-ESS is a funding program, rather than a services arrangement⁵. Particularly, provisions of the DS Act which support the payment of funding to DES-ESS providers refer to "*grants of financial assistance*".

The Government's decision to put the business of one, two and three star providers to open tender is supported by, and allows DEEWR to meet the requirements of, the Commonwealth's financial management framework as it applies to funding programs⁶.

Under section 44 of the *Financial Management and Accountability Act 1997* (the FMA Act), the Chief Executive of a Commonwealth agency is required to manage the affairs of their agency in a way that promotes "proper use" of the Commonwealth resources for which that Chief Executive is responsible. Proper use is considered efficient, effective, economical and ethical use consistent with the policies of the Commonwealth. This obligation extends to the administration of funding programs such as DES-ESS.

Regulation 7A(2) of the FMA Regulations further requires Commonwealth officials performing duties in relation to grants administration to act in accordance with the Commonwealth Grant Guidelines (CGGs)⁷.

There is no defined rule as to what a Commonwealth agency must do to meet the FMA Act requirement to ensure proper use of Commonwealth resources for a funding program. However, it does require Commonwealth officials to be satisfied that the expenditure of Commonwealth funding delivers the best value for money outcomes to the Commonwealth. For a large funding program with many recipients such as DES-ESS, this includes being satisfied that the mix of funding recipients, and the level of funding provided to them, is the most appropriate.

Where funding arrangements have been in place for some time, it is appropriate and important to consider matters such as whether there are other alternative organisations capable of providing the services, whether providers should continue to be funded (or funded at the same level) untested, and whether better performing

⁵ See particularly the definition of a grant under regulation 3A(1) of the Financial and Accountability Regulations 1997.

⁶ Breaches of the financial management framework may attract a range of criminal, civil or administrative remedies.

⁷ These are issued by the Finance Minister under regulation 7A(1) of the FMA Regulations.

providers should have the opportunity to be rewarded (and, in the context of DES-ESS, take on more business).

The most appropriate way to test these matters is through an open competitive process. In this regard, the CGGs, which as previously noted, Commonwealth officials must adhere to, provide that:

“In the case of grant programs, unless specifically agreed otherwise, competitive merit-based selection processes should be used....”⁸

The CGGs further provide that:

“Agencies should have procedures in place to ensure that granting activity is appropriately documented, defensible and substantiated in accordance with legislation and government policy⁹.” This is given context by the statement further on that “Agencies should choose methods that will promote open, transparent and equitable access to grants.”¹⁰

The Australian National Audit Office has also consistently emphasised the importance of ensuring that funding programs are appropriately competitive and open.

As such, consistent with the Commonwealth’s legal and policy framework for funding programs, and because DES-ESS has never been subject to a fully competitive tender process or otherwise open to interest from other potential providers, the Government has determined to tender the business of current 1, 2 and 3 star providers in non-remote areas of Australia.

Providers with a performance rating of 4 or 5 stars for an ESA at the end of March 2012 will be offered a three year extension to the term of their current Deed, rewarding their outstanding performance. In the context of the Commonwealth’s financial management framework discussed above, the Department can be satisfied, based on the performance of those providers, that contracting them for a further three years would involve a proper use of Commonwealth resources and represent value for money to the Commonwealth, without the need to test the market more generally for their business.

Providers with a 3 star or less rating will have their business put to open tender. While the amount of business put to open tender is not yet known, it is likely to be around 80 per cent of the non-remote DES-ESS market. This is appropriate for a funding program that has never been subject to a fully competitive selection process. It is also consistent with the Commonwealth’s financial management framework for the reasons discussed above.

⁸ At page 34

⁹ At page 17

¹⁰ At page 26

The tender process will be open, conducted fairly and transparently and in accordance with Commonwealth policy guidance and practice. Existing DES-ESS providers, including those which have had their business put to open tender, and potential new entrants to the market, will be able to participate. The tender process will be overseen by an independent legal firm, Blake Dawson lawyers, to ensure that the highest standards of probity and fairness are adhered to and that no tenderer is unfairly advantaged or disadvantaged.

3. Delivery of open employment services for people with disability

The provision of open employment services for people with disability commenced in 1986. A brief history of these services is at [Attachment B](#).

Since 1986, the services have evolved significantly and have been subject to continuous improvement. However, they have never been subject to a fully competitive tender or open to interest from other potential providers. There was an open competitive tender in 2006 for the new 'uncapped' stream of disability open employment services, introduced as part of the then Government's Welfare to Work Reform. However, the existing 'capped' stream was not subject to tender. Nineteen of the current 207 DES-ESS providers entered the market as a result of this tender in 2006.

To continue to extend the contracts of providers that have never been subject to competition closes off entry for new providers into the market. It also does not provide assurance to the Government that the best providers are being engaged to assist people with disability to gain and retain sustainable open employment. Tendering the majority of business allows for a review of the mix of providers and helps ensure that the right combination of generalist and specialist services are available for people with disability in the locations where they need them.

3.1 Development and Implementation of DES

In the lead-up to the introduction of DES in March 2010, the Government proposed that a partial competitive tender be conducted for the DES-ESS business to test the market for the first time. The disability employment sector argued that this would be too disruptive during the transition to new service arrangements.

Taking this into account, the Government decided not to tender DES-ESS in 2009. Instead existing providers were engaged to deliver the DES-ESS via an ITT process. This process allowed providers, irrespective of performance, to continue delivering employment services for people with disability without the need to tender.

The Government's decision to 'roll over' the DES-ESS contracts meant that lower performing providers were also offered contract extensions. At the time, the Government clearly signalled its intention to run a competitive tender in the future. The then Minister for Employment Participation, Senator the Hon Mark 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.”

The Government has reiterated to the sector on a number of occasions since then that future purchasing for DES-ESS would include a competitive process. At the 2010 ACE conference in Hobart, Minister Arbib said that the:

“.....decision (to conduct an ITT) allowed you to attend to the changes involved in implementing DES, and has given you more than two years to position yourselves for a competitive process for the next contract”.

While the decision not to tender DES-ESS in 2009 helped minimise disruption during the transition to the new services, it also meant that poor performing providers continued to remain in the market. To help address poor performance, the Government made financial assistance available. A Capacity Building Fund was established to enable the poorest performing providers to obtain professional assistance to help them make a smooth transition to the new model and to improve their performance in terms of employment outcomes for people with disability. Take-up of the available funds was low and disappointing, despite promotion by DEEWR Contract Managers and letters to the CEOs of DES providers.

Lower performing providers have recently been offered some additional assistance in the form of capability building workshops conducted by KPMG during August 2011. Further information about the Capacity Building Fund and the KPMG sessions is at [Attachment C](#).

3.2 2011-12 Budget

The Government’s 2011-12 Budget includes an investment of more than \$3 billion in measures to lift the workforce participation of people with disability. More detail about these measures is at [Attachment D](#).

The competitive purchasing process for DES-ESS announced in the 2011-12 Budget complements this strong investment. It is expected that the tender will attract a high level of interest.

It will provide opportunities for current high performing providers to expand their business and new organisations to enter the market. The decision of the Government to roll over 4 and 5 star providers and tender the remaining business will reward the highest performance while sending a strong message to industry that poor performance will not be tolerated.

4. Industry response to DES-ESS purchasing arrangements

4.1 Issues raised

The Government has consulted with a wide range of stakeholders on the issue of DES-ESS purchasing – both through a formal consultation process that commenced in December 2010, and since the announcement of the procurement arrangements. Providers, peak representative bodies and consumer advocates have expressed a range of views in response to the procurement arrangements. The main issues raised by stakeholders are set out below.

4.1.1 Availability of performance data

Providers were concerned about the availability of performance data to enable them to improve their business processes and prepare for a tender. To address this issue, the Government decided that the purchasing arrangements would include an eight month extension of the DES-ESS contracts until 3 March 2013.

The contract extension means that there is an additional eight months in which to collect performance data. A full two years of performance data will be available before the commencement of the formal purchasing process. This period of time is sufficient for the Government to ensure that the performance data used to inform the purchasing process is statistically robust and available on all providers.

The eight month contract extension also gives providers additional time to prepare for a tender.

4.1.2 Length of contract periods

Providers contend that the length of the current contract period is too short. Due to an extension of the previous DEN and VRS programs by eight months to allow for the development of DES, the current period is two years and four months.

Typically, employment services contracts are for three year periods with provision for extensions. In practice, most contracts to date have exercised this extension provision, effectively making the contract periods much longer than three years. As has been noted previously in this submission, most current DES-ESS providers have been contracted for many years without the need to tender.

Under the current purchasing arrangements the Deeds of DES-DMS providers, who were subject to a tender process in 2009, will be extended by an additional three years, taking the entire period to five years and four months.

4.1.3 Disruption to job seekers

Some providers and other stakeholders have raised concerns about the potential disruption to vulnerable job seekers should their provider change as a result of a tender outcome. It is acknowledged that competitive tender processes can involve some disruption to the market for participants and for employers. However, the Department has extensive experience in successfully managing transitions between employment services contracts since 1998 when contestable employment services

were first introduced. With careful planning and through consultation with the sector, any disruptions in the transition to the new contracts will be managed and minimised.

Around 190 of the 207 organisations currently delivering DES-ESS services have had significant stability since 1986 without needing to tender for business. Contracting the best providers will more than compensate for any short-term disruption that may occur during the transition and will deliver better outcomes for people with disability. A longer than usual transition period has been allowed for to support a sensitive and effective handover of participants and their employers.

4.1.4 Impact on DES providers' staff

Concerns have also been raised over the potential for the DES-ESS tender to result in a loss of staff from the sector.

While the loss of contracts may result in staff turnover, staff in the employment services industry have specialised skills in an industry sector that has experienced substantial growth and will continue to grow. Departmental surveys of provider site managers highlight that while movement of staff between providers is common across the employment services, there is a long tenure within the sector for most staff.

Staff of organisations exiting the DES-ESS service may well have the opportunity to apply for positions with incoming providers who will value their experience.

4.1.5 Impact of Disability Support Pension (DSP) measures

Some stakeholders have raised concerns about the timing of the DES-ESS tender given that the Government is simultaneously implementing reforms to the DSP. The Government's measures to increase the workforce participation of people on the DSP will have minimal impact on DES providers and no impact on the tendering process.

The new DSP measures include additional incentives to help people with disability return to the workforce wherever possible by focusing on their ability, rather than their disability. From 3 September 2011, new DSP claimants who do not have a 'severe impairment' will have to provide evidence they have actively participated in a Program of Support.

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

The measures will mean an estimated additional 10,000 job seekers per year flowing into DES in 2011-12 and 2012-13. While some DES providers have expressed concern that these changes will mean an increase in less motivated job seekers onto their

caseload; this is not a new or more challenging cohort of job seekers for DES providers to assist. The increase will occur across all providers and their sites over an extended period of time.

The contracting of open employment services ensures that organisations deliver services across thousands of sites in Australia. The performance and fee structures of these organisations are driven by the achievement of sustainable employment outcomes with the overall objectives being to ensure that a job seeker's barriers to employment are addressed and that they are assisted into sustainable employment, so they can contribute and be active members of the labour market

4.1.6 DES Performance Framework

The DES Performance Framework is a robust measure to assess providers' achievement of sustainable employment outcomes for people with disabilities, the duration and the time taken to achieve employment outcomes.

Some stakeholders have raised concerns that the DES Performance Framework omits assessing against the quality of the job and that DES providers are not financially rewarded or assessed against the number of hours and the wages that the participant has achieved. It is therefore determined by some stakeholders that the DES Performance Framework is driving quick outcomes rather than quality outcomes and this is inconsistent with the Disability Services Standards.

The Performance Framework was developed with extensive stakeholder consultation and the DES Industry Reference Group decided that wages and hours measures to determine quality not be included in the DES Performance Framework. Given both the new DES model and the Framework has now been embedded, it is important to actively review and refine the Framework with stakeholders. This review will include whether a measurement of hours and wages earned is the best indication of quality and, in turn, drives performance of DES providers.

The DES model recognises that some participants take a longer time to place into employment and it takes more than one job before the participant is moving towards sustainable quality employment by offering more than one job placement fee to the provider.

Further detail on the Performance Framework is outlined in Section 5.

4.2 Strengthening service provision

Other stakeholders, including high performing DES-ESS and DES-DMS providers, Job Services Australia providers and peak employment services and consumer representative bodies, have been supportive of the DES-ESS tender arrangements. They have welcomed the decision as it will strengthen the provision of services for participants and for employers.

Disability consumer representatives, while concerned about potential disruption to job seekers, are cautiously in favour of an open tender as a mechanism to ensure that the highest quality services are available to job seekers with disability.

The eight month contract extension will enable the Department to engage with the industry sector in discussions about the tender process and the selection criteria to help ensure that it is a fair and open process.

5. DES Performance framework

The DES service delivery model and supporting performance framework were developed to align with the DS Act. The objective of the DS Act is to assist people with disability work towards full participation, integration as members of the community and independence. The DES model and performance framework drives provider performance to achieve sustainable employment for people with disability.

The DES Performance Management Framework (Framework) measures the comparative performance of providers. The Framework is designed to enhance Provider performance and ensure continuous improvement in the delivery of quality services to all participants. The assessment of performance is via the Key Performance Indicators addressing efficiency, effectiveness and quality of service. More detail on the Framework is at Attachment E.

The Framework was developed after extensive consultation with external experts, including Access Economics, and industry, providers and consumer groups, over an 18 month period. The Framework is based on previous employment performance models, which have strongly demonstrated their robustness and accuracy in assessing provider performance. Additionally, and along with the current DES financial incentives to providers, the Framework helps ensure the DES model's objective, which is achieving sustainable employment opportunities for people with disability, can be met.

The DES Star Rating system measures the relative performance of providers by comparing job seeker engagement and achievement of outcomes. The Star Ratings take into account the disability type, service requirements of participants, labour market conditions, job seeker characteristics and other factors to ensure a fair and consistent approach in comparing performance.

The DES Star Ratings are a relative not absolute measure. The lack of a competitive tender process to this point means that there can be no certainty or confidence that 'relative average' represents the best outcomes or services for people with disability. While the performance framework can compare existing services to each other, it does not substitute for a competitive tender by comparing an existing market to a potential future market. Optimal performance requires both mechanisms.

5.1 Star Ratings methodology

The Star Ratings methodology uses proven statistical regression analysis to allow the comparison of provider performances across Australia. The Star Ratings model calculates what providers could reasonably be expected to have achieved given the unique set of job seekers they have assisted in their specific labour market. The regression model used for DES specifically takes into account the impact of the person's disability on their relative chance of being placed into sustainable employment. The more the provider's actual outcome rates exceed expected rates, then the higher the performance scores.

The Star Ratings model was initially developed by the department in consultation with the South Australian Centre for Economic Studies in 1999 for Job Network services. Over the intervening period the Star Ratings have been subject to a number of independent reviews including from Access Economics in 2002, the Productivity Commission in 2002 and the Australian National Audit Office in 2005.

In 2002, Access Economics observed that the Star Ratings have the characteristics of objectivity, comprehensibility and replicability that are not available in alternate performance monitoring frameworks. Similarly, the Productivity Commission noted that the Star Ratings combat the incentive for providers to more intensively service the less disadvantaged job seekers on a provider's caseload. These conclusions highlight the significant role that the Star Ratings play in fostering ongoing performance improvements and the incentives for delivering services to the more disadvantaged job seekers.

DES providers must also comply with the Disability Services Standards, which support the DS Act. Compliance with the Disability Services Standards ensures that providers give people with disability a high level quality service.

Providers' compliance with the Disability Services Standards is independently audited on an annual basis. In addition, the Department monitors providers on a regular basis to ensure their compliance with the DES contract. Providers' comparative performance in delivering DES is publically available for people with disability to allow them to make an informed decision when choosing services in their location.

More detail about the DES Performance Framework and the Star Ratings methodology is at [Attachment E](#).

More detail about the current DES Performance is at [Attachment F](#).

6. Tender Process

DEEWR has considerable experience and a proven track record in purchasing employment services dating back to 1998. A key supporting strategy for the DES-ESS tender will be the development of a range of supporting communication activities targeted at potential tenderers. The communication strategy will be aimed at early

and consistent release of information and advice on preparing for and submitting tenders. The release of an Exposure Draft of the Request for Tender in February 2012 (well in advance of the release of the final Request for Tender in May 2012) will also assist prospective tenderers in understanding the program in more detail.

The Exposure Draft will serve to provide a comprehensive description of the services being tendered together with a detailed description of the tender requirements, including the selection criteria to be addressed, conditions of tender lodgement and a draft of the DES Deed under which successful tenderers will be contracted. The release of the Exposure Draft and the Request for Tender will be followed by face to face and online information sessions in capital cities and in regional centres. Stakeholders will be able to provide feedback on the Exposure Draft, particularly on the selection criteria and weightings.

To further support potential tenderers, an Employment Services Hotline will operate from the release of the Exposure Draft until just before the close of tenders to provide information and assistance in response to specific enquiries.

The procurement will be supported by robust governance arrangements covering project management planning and reporting, with a Review Committee comprising senior departmental officers, an internal legal advisor and the independent Probity Advisor, Blake Dawson lawyers.

7. Conclusion

The Government has stated its commitment to improving the delivery of employment services for people with disability. The conduct of a competitive tender for the DES-ESS program will provide a level of assurance to the Government, and the public, that the best possible providers are engaged to deliver employment services to people with disability.

Objectives of the *Disability Services Act 1986* and Disability Services Standards

Objectives of the Disability Services Act 1986

- assist persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community;
- promote services provided to persons with disabilities; ensure outcomes achieved by persons with disabilities are taken into account in the granted of financial assistance for services;
- encourage innovation in the provision of services;
- assist in achieving positive outcomes including independence, employment and integration into the community by the provision of comprehensive rehabilitation services.

http://www.comlaw.gov.au/Details/C2011C00458/Html/Text#_Toc297040829

Disability Services Standards

Under the *Disability Services Act 1986*, organisations funded by the Government to deliver DES must be certified against the Disability Services Standards. Failure to achieve and maintain certification may result in a loss of funding.

Since 1 January 2002 disability employment services have been required to be certified by independent auditors as meeting twelve Disability Services Standards to receive funding from the Australian Government. The Disability Services Standards cover issues such as the privacy, dignity, value, and employment conditions of the person with a disability, and the skills and training for staff working at the service.

The system is based on an established system of certification and international standards of best practice. Independent auditors from accredited certification bodies certify DES providers against the 12 Disability Services Standards and 26 associated Key Performance Indicators.

Certification audits occur every three years. A surveillance audit is carried out in each of the intervening years. If an organisation has more than one service location, only a proportion of sites are assessed in the surveillance audits. Certification bodies are accredited by the Joint Accreditation Systems of Australia and New Zealand (JAS-ANZ), a joint venture of the Australian and New Zealand governments.

New DES providers have 12 months from the date funding commences to obtain certification. Where an independent auditor finds that an organisation does not conform to one of the standards, they are given time to rectify the non-conformance. Failure to rectify the non-conformance may result in loss of funding.

The 12 Disability Services Standards and 26 associated Key Performance Indicators are listed below.

Standard 1: Service access

Each person with a disability who is seeking a service has access to a service on the basis of relative need and available resources.

- KPI 1.1 The service provider adopts and applies non-discriminatory entry rules in respect of age, gender, race, culture, religion or disability, consistent with the contractual obligations of the service provider and the purpose of the service.
- KPI 1.2 The service provider's entry and exit procedures are fair and equitable and consistently applied.

Standard 2: Individual needs

Each person with a disability receives a service that is designed to meet, in the least restrictive way, his or her individual needs and personal goals.

- KPI 2.1 Each individual's employment goals are established objectively to reflect his or her needs and personal goals.
- KPI 2.2 Each individual's employment goals are used as a basis for service provision, with the service provider undertaking a process of planning, implementation, review and adjustment to facilitate the achievement of these goals.
- KPI 2.3 Services are delivered to meet each individual's employment goals through pathways and plans that do not have any unnecessary restrictions or constraints.

Standard 3: Decision making and choice

Each person with a disability has the opportunity to participate as fully as possible in making decisions about the events and activities of his or her daily life in relation to the service he or she receives.

- KPI 3.1 The service provider provides appropriate and flexible opportunities for each individual to participate in decision-making at all levels, including individual choices in pre employment and employment planning, service delivery planning and corporate and business planning.
- KPI 3.2 The service provider acts upon the outcomes of service recipient input into decision-making.

Standard 4: Privacy, dignity and confidentiality

Each service recipient's right to privacy, dignity and confidentiality in all aspects of his or her life is recognised and respected.

- KPI 4.1 The service provider complies with the Information Privacy Principles of the Privacy Act 1988 in order to protect and respect the rights of individual service recipients. The service provider does not disclose personal information about service recipients without their informed consent.
- KPI 4.2 The service provider promotes tolerance and respect for each service recipient's personal needs and circumstances.

Standard 5: Participation and integration

Each person with a disability is supported and encouraged to participate and be involved in the community.

KPI 5.1 The service contributes to individual outcomes for service recipients that progressively builds opportunities for their participation and involvement in the community through employment.

Standard 6: Valued status

Each person with a disability has the opportunity to develop and maintain skills and to participate in activities that enable him or her to achieve valued roles in the community.

KPI 6.1 The service promotes the belief and ability of service recipients to fulfil valued roles in the community.

KPI 6.2 The service promotes employment opportunities for service recipients to fulfil valued roles in the community.

KPI 6.3 The service develops and maintains service recipients' skills relevant to their roles in the community.

Standard 7: Complaints and disputes

Each service recipient is encouraged to raise, and have resolved without fear of retribution, any complaints or disputes he or she may have regarding the service provider or the service.

KPI 7.1 The service provider encourages the raising of complaints by service recipients regarding any areas of dissatisfaction with the service provider and the service.

KPI 7.2 Service recipients have no fear of retribution in raising complaints.

KPI 7.3 The service provider facilitates the resolution of complaints or disputes by service recipients regarding the service provider and the service.

Standard 8: Service management

Each service provider adopts quality management systems and practices that optimise outcomes for service recipients.

KPI 8.1 The service provider has management systems in place that facilitate quality management practices and continuous improvement.

Standard 9: Employment conditions

Each person with a disability enjoys working conditions comparable to those of the general workforce.

KPI 9.1 The service provider ensures that people with a disability, placed in open or supported employment, receive wages according to the relevant Australian Pay and Classification Scale (APCS), special Federal Minimum Wage (SFMW), award, order or industrial agreement (if any). A wage must not have been reduced, or be reduced, because of award exemptions or incapacity to pay or similar reasons and, if a person is unable to work at

full productive capacity due to a disability, the service provider is to ensure that a pro-rata wage based on the applicable special SFMW, APCS, award, order or industrial agreement is paid. This pro-rata wage must be determined through a transparent assessment tool or process, such as Supported Wage System (SWS), or tools that comply with the criteria referred to in the Guide to Good Practice Wage Determination including:

- compliance with relevant legislation;
- validity;
- reliability;
- wage outcome; and
- practical application of the tool.

KPI 9.2 The service provider ensures that, when people with a disability are placed in employment, their conditions of employment are consistent with general workplace norms and relevant Commonwealth and State legislation.

KPI 9.3 The service provider ensures that, when people with a disability are placed and supported in employment, they, and if appropriate, their guardians and advocates, are informed of how wages and conditions are determined and the consequences of this.

Standard 10: Service recipient training and support

The employment opportunities of each person with a disability are optimised by effective and relevant training and support.

KPI 10.1 The service provider provides or facilitates access to relevant training and support programs that are consistent with the employment goals and opportunities of each service recipient.

Standard 11: Staff recruitment, employment and training

Each person employed to deliver services to a person with a disability has relevant skills and competencies.

KPI 11.1 The service provider identifies the skills and competencies of each staff member.

KPI 11.2 The service provider ensures that its staff have relevant skills and competencies.

KPI 11.3 The service provider ensures the provision of appropriate and relevant training and skills development for each staff member.

Standard 12: Protection of human rights and freedom from abuse

The service provider acts to prevent abuse and neglect and to uphold the legal and human rights of service recipients.

KPI 12.1 The service provider takes all practical and appropriate steps to prevent abuse and neglect of its service recipients.

KPI 12.2 The service provider upholds the legal and human rights of its service recipients.

History of Open Disability Employment Services

Timeline of key changes

- 1986 Passage of the *Disability Services Act 1986*. The Act came into effect on 5 June 1987.
- 1987 Two types of disability employment service were established under the new Commonwealth Disability Services Program: the competitive employment, training and placement service; and supported employment service.
- 1988 Commencement of the Workplace Modifications Scheme.
- 1991 Reform of Commonwealth income support payments for people with disabilities (*Disability Reform Package*).
- 1992-93 Federal Parliament passed the *Disability Discrimination Act*. The *Disability Services Act 1986* was amended to allow for the introduction of Disability Services Standards.
- 1995 The Budget reflected Government's response to the Baume Review, including definition of the Disability Services Program as a labour market program and development of a framework for performance-based funding of disability employment services.
- 1997 Centrelink was established as the gateway to income support and employment and related services.
An Employer Incentives Strategy was announced in August 1997.
- 1999–2002 Case Based Funding Trial, - fees were based on a job seeker's assessed level of support need and employment outcomes achieved by providers.
- 2003 The 2003 Budget announced new funding to implement case based funding for Disability Open Employment Services and Business Services.
- 2004 Disability Open Employment Services program transferred from Department of Families and Community Services (FaCS) to the then Department of Employment and Workplace Relations (DEWR). DEWR contracted disability open employment services from a national network of government and non-government organisations. Supported employment (Business Services) remained with FaCS.
- 2005 Case-based funding replaced block funding for Disability Open Employment Services from 1 July 2005.
- 2006 May 2006 program name was changed to the Disability Employment Network (DEN). Vocational Rehabilitation Services (VRS) continued to be delivered by CRS Australia. DEWR contracted for the provision of services under DEN and VRS from 1 July 2006 to 30 June 2009. As part of the Welfare to Work reforms introduced on 1 July, a new uncapped stream was introduced to complement the existing DEN capped stream via a competitive tender process.
- 2007 Partial contestability was introduced to VRS; CRS Australia retained two-thirds of business.
- 2009 Contracts for DEN and VRS extended to 28 February 2010.
- 2010 Disability Employment Services 2010-2012 commenced on 1 March.

Building the Disability Employment Services Model

Commencing in 2008, the Review of Disability Employment Services was undertaken within the broader context of the Government's social inclusion and skills agendas which included the review of Job Capacity Assessments, and the development of the National Mental Health and Disability Employment Strategy and the National Disability Strategy.

Disability Employment Services replaced the Disability Employment Network and Vocational Rehabilitation Services and commenced operating on 1 March 2010 after extensive public consultation, including input from disability services consumers, providers, advocacy groups, and peak industry bodies.

Major changes from previous models included the: uncapping of services; a key focus on employment outcomes; increased resources for remote participants; increased focus on education, training and skills development and, Ongoing Support available in the workplace for as long as required

The DES model and therefore provider performance is driven by the achievement of sustainable employment for people with a disability.

In addition to DES-DMS and DES-ESS, the Department also administers the following related employment services for people with disability.

Employer Incentives Scheme

- National Panel Members - deliver three assessment types: Ongoing Support, Workplace Modifications assessments and the Supported Wage System.
- Employment Assistance Fund supports the employment of people with disability by providing financial assistance to purchase a range of work-related services and modifications (Workplace Modifications and Auslan Interpreting).
- Supported Wage System is an industrial relations mechanism in place since 1994 that enables employers to pay people with a disability according to their level of workplace productivity. Eligible workers undergo an assessment in comparison to other workers. Assessments must be conducted annually in accordance with the model SWS provisions in awards and agreements.
- Job Access - A national disability employment advisory service
- National Disability Recruitment Coordinator - develops agreements with large employers and assists them to develop disability employment policies.
- Wage Subsidy Scheme – provides a financial incentive to employers when considering employing participants with a disability in the open employment market at award wages.

Provider Capability

As a component of the transition to the DES-ESS, Disability Employment Network providers who had at least one site or outlet with a star rating of 2 or below in the June 2009 or December 2009 ratings were invited to participate in a provider Capacity Building Fund.

The Capacity Building Fund was designed to assist organisations develop business processes which would respond well to the performance framework and assist with the forthcoming tender of DES-ESS. Up to \$11,000 (inc GST) was available to eligible DES-ESS providers to access a range of assistance including: small business or human resource expertise; professional services such as accounting; or mentoring from within the industry.

Access to the fund was voluntary, and was available from 1 July 2010 to 30 June 2011. The intent of the fund was to assist low performing providers to identify strategies to improve their business efficiencies so that better results could be achieved for job seekers, and their organisations would be better placed to respond to future tenders. Eighty-three providers were eligible for funding. Early take up of the fund was slow. In November 2010, the Department sent eligible providers who had not taken up the offer a second letter to remind them of the availability of the fund. After 6 months, the take-up rate was well below 50 per cent, but improved to 75 per cent (or 61 of the 83 eligible providers) by the end of the 12 month period. The average amount taken-up by each of the 61 providers was \$10,289.

For further assistance under the Capacity Building Fund, the Department engaged KPMG to run a series of performance workshops across the country in August 2011. The sessions were offered to Disability Employment Services – Employment Support Services providers with a highest Employment Services Area level star rating of 3 or below (March 2011). The workshops covered a range of topics including employer engagement, star ratings, performance improvement and business development.

Attendance at the workshops was good with over 150 DES provider staff from 120 different organisations attending. Departmental staff, as well as representatives from stakeholder groups including Disability Employment Australia, National Employment Services Association, and National Disability Service attended the sessions. The workshops were designed to encourage a free flow of business ideas and strategies from high performing and low performing organisations.

2011-12 Budget Workforce Participation Measures for People with Disability

The 2011-12 Budget included a range of workforce participation measures, including for people with disability. The Government is investing a total of \$8.5 billion over the next four years in employment services, including \$3 billion for DES, to give unemployed Australians a better chance to find a job. This investment will help achieve a high workforce participation rate and also help to ensure Australia's future economic prosperity.

This significant investment underscores the Government's commitment to increasing the labour force participation of people with disability. Key workforce participation initiatives in the 2011-12 Budget for people with disability include:

- Additional wage subsidies to help unemployed people, including those with disability, gain employment;
- Targeted Employment Broker Projects to create new jobs for unemployed people with disability;
- Extension of funding to continue to assist people with moderate intellectual disability secure sustainable employment and to support young people with disability make the transition from school support to employment services;
- Funding under the National Mental Health Reform which will assist job seekers with mental illness;
- Introduction of new participation requirements for disability support pensioners under the age of 35 with some capacity to work;
- Fast track of new rules that require disability support pension applicants to get employment assistance to try to get back to work before they can apply for the pension; and
- More generous rules for existing disability pensioners to encourage them to work more hours.

DES Performance Framework

The DES performance management framework was developed to support the program intent of the new Disability Employment Services, namely:

- To increase employment participation for people with a disability.
- Providing the right assistance as early as possible, including for school leavers, to ensure a successful transition to work.
- To reduce the red tape and administrative burden on providers.
- To place greater emphasis on helping employers to address skills shortages.
- Movement to a demand driven program, giving all eligible job seekers immediate access to individually tailored services that provide capacity building, training, work experience and other interventions to help participants to find suitable employment.

The Key Performance Indicators for DES are set out in the DES funding deed and address:

Efficiency – measured by proportion of referred clients who commence in assistance and the time taken to achieve employment.

Effectiveness – measured by the proportion of clients achieving employment or retaining their employment with support

Quality – conformity with the Disability Services Standards, service guarantee and code of practice.

An Industry Reference Group developed the Performance Framework and Key Performance Indicators. The extensive work undertaken aimed to ensure that the performance of all providers in DES is assessed in a fair and consistent manner and that participants with specific disability types are not advantaged or disadvantaged in the Performance Framework.

The membership of the Reference Group was drawn from peak industry associations and included: ACE National Inc; National Employment Services Association; National Disability Services; Jobs Australia Limited; the Australian Rehabilitation Providers' Association; and, the Australian Federation of Disability Organisations.

Details of the DES performance framework and funding model were included in the DES-ESS ITT in 2009.

DES Performance Measures and Weightings

KPI	Performance Measure	Employment Support Service 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 <i>(including remote education-related outcomes)</i>	5 %
2.4	13 week Bonus Outcome Proportion of participants who achieve a 13 week Bonus Outcome <i>(including 13 week outcomes achieved by Indigenous Australians)</i>	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	26 week Bonus Outcome Proportion of participants who achieve a 26 week Bonus Outcome <i>(including 26 week outcomes achieved by Indigenous Australians)</i>	5 %
2.8	Ongoing Support Proportion of ongoing support participants who remain in employment or exit ongoing support as an independent worker	15 %

Star Ratings Methodology

The DES Star Rating system measures the relative performance of providers by comparing job seeker engagement and achievement of outcomes. The Star Ratings take into account the disability type, labour market conditions, job seeker characteristics and other factors to ensure a fair and consistent approach in comparing performance.

The Star Ratings methodology uses proven statistical regression analysis to allow the comparison of provider performances across Australia. It does this by measuring the outcome levels of all providers for the job seekers they are assisting and then applying the results to a set of established job seeker and labour market characteristics which impact most on the achievement of job outcomes. This enables the

Star Ratings model to calculate what providers could reasonably be expected to have achieved given the unique set of job seekers they have assisted in their specific labour market. Scores for each performance measure are then calculated by comparing providers' actual outcome rates with their expected outcome rates. The more that actual outcome rates exceed expected rates then the higher the performance scores.

The Star Rating model was initially developed by the department in consultation with the South Australian Centre for Economic Studies in 1999 for Job Network services. Over the intervening period the Star Ratings have been subject to a number of independent reviews.

Access Economics, in 2002, concluded:

"The use of a model such as that developed by [the department] to assess performance is a sound, leading-edge approach to performance measurement. The statistical model used to determine provider relativities has the advantages of objectivity, replicability, and reliance on data generated by the Job Network's operation. These are considerable advantages. There is no obvious replacement approach that can produce comparable national, comprehensive, objective assessments" (Access Economics, 2002, p.5).

Further, the Productivity Commission (2002) observed that

"[a] central feature of the star ratings model is that it combats incentives for providers to work most intensively with the easiest to place by giving greater weight to outcomes for more disadvantaged job seekers and taking account of the substantial differences in regional labour markets" (p. 11.19).

The Australian National Audit Office (ANAO) as part of their audit of *the Implementation of Job Network Employment Services Contract 3* found:

"...that the star ratings system is primarily a means for [the department] to press providers for higher levels of performance. While there remains substantial variation among Job Network provider performance the system has enduring value and [the department] can continue to use it with a reasonable expectation that it will continue to provide an incentive for further performance improvement." (ANAO, 2005, p.148).

The evaluation of the *Active Participation Model* found that:

"The regular release of the ratings coincided with a sustained improvement in the employment outcome levels of job seekers assisted by Job Network. This improvement seemed greater than the level of improvement which could realistically be expected from improvement in the labour market" (DEEWR, 2007, p.142).

These conclusions highlights the significant role that the Star Ratings play in fostering ongoing performance improvements and the incentivisation of the servicing of the more disadvantaged job seekers.

Current DES Performance

The uncapping of DES in March 2010 has allowed all eligible participants to receive tailored and individualised disability employment assistance for the first time.

DES is now demand driven and, as a result, there has been a significant growth of 41 per cent in the number of people gaining immediate access to disability employment services. There are currently over 146,000 people with disability receiving DES. Additionally, there are over 155,000 people with disability receiving services from Job Services Australia, predominately in Streams 3 and 4.

The growth in the number of people receiving disability services has also seen a significant growth in the number of job placements and outcomes that are being achieved.

While the Evaluation of DES is due to be completed in December 2012, a very early Interim Evaluation has been completed and released to the industry. Table 1 below compares job placement and 13 Week Outcome rates for DES and DEN/VRS participants, using the same method used in this DES interim evaluation (and same commencement cohorts) but with follow-up extended to 31 July 2011.

It is important to be cautious about making direct comparisons between DEN/VRS outcomes and DES Outcomes for the following reasons:

- At the time of the interim evaluation, DES had only been in operation for 18 months, and the DES data used for comparison only covers the DES start-up period;
- This start-up period was associated with the uncapping of the program and the rapid growth of participants entering the program;
- The definition of Outcomes changed with the introduction of DES in March 2010, with a much greater emphasis on sustainable jobs.
 - Under DEN, outcomes could be achieved through multiple short term jobs achieved over an extended period;
 - Under DES, outcomes have to be for a single sustainable placement over 13 or 26 weeks, with permissible breaks in the employment of up to four weeks where the break is outside the control of the participant or provider (eg. industry shut-downs over Christmas, illness etc).

The Interim Evaluation showed the 13 week outcome rate of 14 per cent in DES at the end of the first eight months is similar to the outcome rate of 14.1 per cent for DEN/VRS participants. This rate is expected to grow as the program matures and early indications support this. In comparing December 2010 and June 2011, the 13 week full outcome rates have improved by 37 per cent in DMS and 47 per cent in ESS. Over the same six month period the national 26 week full outcome rate improved by 77 per cent in DMS and 98 per cent in ESS.

DMS is outperforming VRS for all five primary disability groups; it is reasonable to assume that this is a result of the competitive tender (DMS is not drastically different to VRS in a policy sense). The picture for ESS is somewhat different, with modest improvements in job placement and outcome rates for some groups and reduced outcomes for others, compared with DEN.

This suggests that DMS is delivering better value for money than VRS and stronger outcomes for job seekers with disability. Value for money has not been tested in DEN or ESS and therefore cannot be assessed. Star ratings measure performance relative to the 'average'. In the case of ESS we cannot know whether average (the mid-point on the 3 star range) represents value for money.

Table 1: Job placements and 13 Week Outcomes by primary disability, DES and DEN/VRS

Primary disability by program	Cohort total (no.)	Job Placements (no.)	13 Week Outcomes (no.)	Job Placements (%)	13 Week Outcomes (%)	Conversion rate: placement to 13 Week Outcome (%)
Physical						
DES DMS	9,699	3,201	2,494	33.0	25.7	77.9
VRS	9,673	2,152	1,573	22.2	16.3	73.1
DES ESS	4,602	1,293	1,018	28.1	22.1	78.7
DEN	4,027	1,534	829	38.1	20.6	54.0
Psychiatric						
DES DMS	4,130	1,462	1,079	35.4	26.1	73.8
VRS	4,557	1,105	745	24.2	16.3	67.4
DES ESS	4,082	1,255	909	30.7	22.3	72.4
DEN	4,495	1,969	1,047	43.8	23.3	53.2
Learning						
DES DMS	260	104	72	40.0	27.7	69.2
VRS	126	27	13	21.4	10.3	48.1
DES ESS	1,493	651	482	43.6	32.3	74.0
DEN	1,498	837	447	55.9	29.8	53.4
Intellectual						
DES DMS	35	12	12	34.3	34.3	100.0
VRS	12	3	3	25.0	25.0	100.0
DES ESS	355	129	100	36.3	28.2	77.5
DEN	554	267	162	48.2	29.2	60.7
Sensory						
DES DMS	315	103	75	32.7	23.8	72.8
VRS	269	64	53	23.8	19.7	82.8
DES ESS	593	225	168	37.9	28.3	74.7
DEN	664	343	176	51.7	26.5	51.3

Placements are employment placements only.

1. Cohorts include all participants who commenced in services between 1 March and 30 June of 2010 for DES, or 1 March to 30 June 2009 for DEN/VRS. Placements and outcomes were counted only if they occurred by 31 July of the following year.
2. 13 Week Outcomes shown are full and pathway (or intermediate) 13 Week employment and education outcomes.
3. DEN cohort includes both capped and uncapped streams.
4. The requirements which need to be met before a placement or outcome can be claimed