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**Jobs Australia submission to the Senate Inquiry into the DEEWR tender process to award employment services contracts**

Jobs Australia welcomes the opportunity to contribute to the Senate Inquiry into the DEEWR tender process to award employment services contracts.

Jobs Australia is the peak body for over 270 nonprofit providers of employment and related services. Our members have delivered a wide range of employment-related services to the most disadvantaged people in communities around Australia in many cases since the mid to late-1970s, and through the many iterations of labour market programs that have come and gone since then.

The combined experience of our members, and our own involvement in the iterative development of employment services in Australia over the past 20 years, has given us a rich depth of insight into the many and complex aspects of the current public employment service.

We provide this submission as constructive input towards the Committee's deliberations and would be pleased to provide any further information the Committee might require.

We appreciate that the outcomes of the tender cannot, for a variety of good reasons, be changed.

We do think, however, that the Committee's Inquiry could provide some impetus for reflection about procurement and contracting of public services in ways that are more effective, less costly and disruptive, which preserve necessary accountability and transparency and which promote a continued focus on outcomes, competition and choice.

Yours sincerely



David Thompson AM  
CEO

**The following section addresses the specific points from the Committee's terms of reference.**

(a) The conduct of the 2009 tendering process by the Department of Education, Employment and Workplace Relations to award Employment Services contracts, with particular attention to:

- (i) the design of the tender, including the weighting given to past performance and the weighting given to the 'value for money' delivered by previous and new service providers,

The Department has developed considerable expertise in the design and construction of what has become a very complex and sophisticated tendering process over the course of the 11 years of operation of the contracted-out employment services system in Australia. This is generally reflected in the quality of the tender documentation and in many aspects of the design and implementation of the tender assessment process. The great majority of providers have similarly developed their skills and expertise in the complex and demanding task of preparing their responses to request for tenders.

The Department has no doubt been scrupulous in its adherence to probity requirements in all aspects of the tender process and there is no evidence or suggestion of any impropriety or untoward bias in the tender assessment process. While the outcomes of the tender are undoubtedly probitious and objectively determined in strict accordance with the tender specifications, they might have been wiser and better outcomes in some instances if common sense and a closer eye on the need for stability and less dislocation were also brought to bear in the assessment and decision making process.

The outcomes of the tender produced some results which, prima facie, are difficult to fathom and which may not represent the best outcomes for Australia's rapidly growing numbers of job seekers or for the government and for taxpayers. We do not suggest or expect that the negative outcomes of the tender for some organisations can be ameliorated or undone. We do hope, however, that future procurement processes can be improved in ways which keep disruption and instability to a necessary minimum, while preserving a strong focus on outcomes, competition and choice.

There are a number of instances where high performing providers with extensive track records in the delivery of a wide variety of employment and related services and undoubted capability to deliver the new suite of Job Services Australia services failed to win contracts or were offered substantially reduced levels of business. There are other instances where highly capable providers maintained comparable levels of business but have been required to close sites in many locations and to open new sites in new locations, incurring significant transaction costs in doing so.

The degree of disruption and dislocation in Australia's constructed employment services market as a consequence of the tender outcomes was much higher than anticipated and greater than desirable. It must also be observed, however, that many highly capable providers, including many of our own member organisations, have been very successful in the tender process and, once the transition process is completed and the market has stabilised and settled, will provide the high quality services needed by Australia's unemployed people and especially those most disadvantaged.

There is considerable debate about the relatively small (30%) weighting given to past performance in the tender assessment process and speculation that a higher weighting

might have produced different and better results. In most instances, but with some notable exceptions, it is possible to discern some correlation between past performance and tender outcomes. Without knowledge of the way in which the Department assessed past performance across the array of existing programs (and the ways in which different levels and combinations of performance were aggregated and scored) it is not possible to determine whether a higher weighting of past performance would have produced a different and better result.

Value for money was not an explicit selection criterion but rather is presumably encompassed, in a fixed price context, in the Department's assessment of understanding and general strategies and local strategies criteria which carried the greatest weight in the tender assessment process. Presumably the Department's objective was to select providers which it assessed as being most capable of delivering highest quality services and best performance in terms of outcomes for job seekers generally, and the most disadvantaged job seekers in particular. As noted below, because we don't know how this assessment was conducted, it is not possible to make any judgement about it.

- (ii) evaluation of the tenders submitted against the selection criteria, including the relationship between recent service performance evaluations in various existing programs (such as provider star ratings), selection criteria and tendering outcomes, and

Matters concerning the assessment of previous service performance evaluations are discussed above. While performance management frameworks are relatively new and less developed for some programs, for the current Job Network the performance management framework is arguably one of the most sophisticated systems operated in any comparable country and system and does provide a sound basis for assessment of comparative performance of existing providers. The system has been iteratively reviewed, refined and developed and is being further improved and refined for the operation of Jobs Services Australia (JSA).

The methodology adopted by the Department for its assessment of the understanding and general strategies, local strategies and management and governance criteria is not described in the tender documentation and it is not therefore possible to comment on its accuracy, quality or veracity. While the Department could be expected to have adopted a scrupulously objective and probatious approach to this assessment, it is possible that this aspect of the process could have resulted in some of the apparently quirky outcomes of the tender.

If the Department were to provide information about how it, in effect, marked each tenderer's "essays", it might shed some light on some of the unexpected results. As observed earlier, the great majority of organisations which now provide employment services have developed considerable skills and experience in dealing with complex tenders and it would be surprising if marginal differences in their essay writing capabilities could yield such markedly different results, especially for those organisations with long track records of effective and high performance.

To date reports we have received from our members about the debriefing sessions run by the Department indicate that these are not providing the degree of insight and explanation into the reasons for specific decisions which was expected when these sessions were announced.

- (iii) the extent to which the recommendations of the 2002 Productivity Commission report into employment services have been implemented;

The great majority of the recommendations of the Productivity Commission relate to the context and period in which they were made and are not particularly relevant to the contemporary context and situation. Many of the recommendations were taken into account in the design and implementation of the Active Participation Model which will shortly be replaced with the new Jobs Services Australia. The reforms being implemented by the government are significant and largely positive – including the demise of a single and linear continuum of services for all job seekers, much greater emphasis on skills and human capital development and an end to the former government’s “work first approach”, far more emphasis on engagement, inclusion and assistance for the most disadvantaged job seekers, more flexible and individualised assistance, and a more engagement-oriented compliance and penalties system for job seekers.

The 2002 Productivity Commission report on the Job Network of 2002 made a number of recommendations which were not adopted by the former government that are relevant to the terms of this Inquiry. These are the recommendations relating to the way the purchaser-provider model could operate in the Australian context:

*Recommendation 11.1: The Commission recommends that, after Employment Services Contract 3, competitive tendering in the Job Network be replaced by a licensing system that:*

- *ultimately permits free entry at any time to any supplier that meets DEWR’s accreditation standards; and*
- *includes automatic licence renewal, subject to a requirement that providers achieve a certain performance standard.*

We believe that it is now time for some modification of the existing procurement process on the grounds that it is:

- too costly and time-consuming for both the Department and for tenderers who report spending hundreds of thousands of dollars alone on the tender document, a situation which clearly disadvantages smaller (nonprofit and for-profit alike) organisations, particularly those in smaller, poorer communities;
- it has become perhaps too objective and arbitrary and lacks a negotiation-oriented structure which would allow for the balanced consideration of the position of both potential parties to the contract; and
- the sector and its ‘market’ are now mature with levels of sophistication which suggest that they have the capacity to accommodate a more sophisticated and negotiated approach to procurement, and that while there needs to be provision to enable new players to enter the market the procurement process should recognise and work with the expertise that providers have built up over 11 years.

The Commission’s recommendation regarding licensing is an alternative approach to procurement which was not generally supported at the time by the then existing providers because it would have resulted in uncertainty and potential instability. We suspect that providers are likely to be of the same mind now. The Commission’s view that there could be a better alternative to the mega-tender process clearly requires further consideration some seven years after the recommendation was made.

The introduction of the contracted employment services market in Australia represented ground-breaking and world leading reform in public services delivery which has been

adopted in different forms and to different degrees in many other comparable countries. We think it is time for some further and radical reform of the procurement and contracting process and consider the Committee's Inquiry is an important and useful opportunity in this regard. We do not advocate following the soon-to-be implemented UK model of several head contractors which have the capacity to subcontract. This would simply transfer the level of bureaucratic control from the Department to the head contractors and would encourage the proliferation of different IT and other business management and implementation systems.

If a purchaser-provider model for employment service delivery is to function effectively in Australia a simpler and smarter purchasing and contracting process must be developed that does not tie up the energy of the Department and potential providers for many months of unproductive and costly activity and that inevitably diminishes the overall performance of the system for extended periods. A more common sense implementation of the procurement rules and structures needs to be put in place to ensure accountability, transparency and even-handedness.

For example, it makes little sense to force organisations to close large parts of their business in one area only to award them new business in another. This situation occurs when tender assessments are made at ESA level, examining the relative merits of prospective providers within a defined area, but paying apparently little regard for the impact such an assessment may have on the organisation's whole operations.

The Department might well respond that the conditionality provisions in the tender documents are designed to address this kind of situation, but it is our assessment that these are too blunt to be a useful tool for tenderers. This does not allow the space for the kind of business negotiation process that such decisions require. Tender assessment in the context of a mature market now 11 years old is not an all-or-nothing situation and common sense and judgement have a legitimate role to play alongside highly probatious and objective, hands-off assessments against selection criteria.

*Recommendation 14.1: The Commission recommends that if significant problems of transparency, accountability and power imbalance between DEWR and providers continue into Employment Services Contract 3, the Government give consideration to the establishment of an independent Job Network agency.*

In the course of consultations on the reforms which are being implemented through Jobs Services Australia, we expressed the view that consideration should be given to establishing a separate regulator for the employment services market in Australia. We note and accept that the government saw fit not to adopt our view but contend that there continues to be a good case for a separate regulator which could, amongst other roles, provide oversight and direction to the Department on procurement practices and decisions, act as an arbiter of disputes between the Department and providers, and keep a weather eye on regulatory and red tape issues.

Despite the Government's and the Department's best intentions in terms of improving relationships with providers, there remains a considerable imbalance and asymmetry in the relationship between the Department and individual providers which is reflected in the new contract for employment services and in other ways. Research which is being conducted with financial support from Jobs Australia by the Whitlam Institute and the Public Interest Advocacy Centre in New South Wales into the nature of government contracting with nonprofits organisations clearly supports and reinforces that view. That

research is almost completed and we hope to be in a position to provide the Committee with the relevant report in the next few days.

(b) The level of change of service providers and proportion of job seekers required to change providers, and the impacts of this disruption in communities with high levels of unemployment or facing significant increases in unemployment;

The 280 organisations currently delivering the seven programs have been reduced to 116 JSA contracts to be delivered by a total of 141 providers and supported by at least 48 sub-contractors. We estimate current provider organisations comprise:

- 81 Job Network providers,
- 78 Community Work Coordinators,
- 100 PSP providers,
- around 60 JPET providers, and
- a small number of Harvest Labour Service providers.

In many cases providers deliver more than one program. This means there is a significant reduction in the number of providers and that many will be exiting the employment services market. The exact number of exits will take some time to determine and will depend on the nature and viability of sub-contract arrangements, the nature and extent of involvement in other programs such as disability employment services and many other factors.

Contrary to frequent assertion and speculation at the time of the announcement of the tender results, there is no evidence to suggest that there was any systematic or other kind of bias for or against nonprofits or any other types of organisations in the tender assessment process. The design of the new JSA system combined with the natural market consolidation which has occurred has meant, however, that there is a significant reduction in smaller providers which has only been ameliorated to a limited degree by the development of partnerships and sub-contracting arrangements.

This consolidation of the "market" was predicted by many observers prior to the announcement of the tender results and is to some extent an inevitable consequence of ongoing market consolidation (which has resulted in ongoing reduction of Job Network from an initial 300 providers in 1998 to the current 81) and the consolidation of 7 programs into a single suite of JSA services.

Providers not gaining contracts and those with reductions in their levels of business are having considerable difficulty retaining enough staff to deliver on their current contract obligations until June 30 as a consequence of staff moving to "winning" providers.

At this stage it appears that 260,000 job seekers will have to relocate to new providers – approximately 42% of the current pool of unemployed people (approximately 620,000 during April 2009). While the Department has gone to considerable lengths to effectively manage this and other aspects of the transition process, there is and will continue to be a significant degree of disruption of services as job seekers move to new providers and begin the process of establishing new relationships with new provider personnel. This is likely to be particularly problematic for those JPET and PSP clients who have close and established relationships with existing case managers and who are being moved to new and different providers – not least because there are no additional resources for the transition and handover process.

Another aspect of the transition which must be managed by new, continuing and expanding providers is the competition between them for usually scarce real estate which is proximate to Centrelink offices and for engagement of many of the existing staff of providers who will lose their current jobs on or before the end of June in most cases. This competition is driving up the costs of both premises and staff and will have an impact on costs and quality of future service delivery in a fixed-price environment.

The focus of the whole of the system on the extended tender process, combined with the significant change in the composition and segmentation of the market, inevitably mean there is and will continue to be a high level of disruption which will only be avoided in future with an approach to procurement which results in more stability and more iterative rather than dramatic change. It is indeed unfortunate that this disruption to current service delivery is occurring at a time when unemployment levels are rising rapidly in many communities as a consequence of the global recession. This could not have been foreseen by the government or the Department when the tender process was launched.

(c) Any differences between the recommendations of the Tender Assessment Panel and the announcement by the Minister for Employment Participation of successful tenders on 2 April;

We have no information with respect to this matter, other than to observe that it is likely that some marginal adjustments to business and contract allocation were made as a consequence of discussions and negotiations between the Department and some providers after initial advice was provided by the Department.

(d) The transaction costs of this level of provider turnover, the time taken to establish and 'bed-down' new employment services, and the likely impacts of this disruption on both new and existing clients seeking support during a period of rapidly rising unemployment;

The expected nature and level of disruption to the system as a consequence of provider turnover is addressed in our response to (b) above.

All JSA providers are presently engaged in the mammoth task of gearing up their staff, sites and systems for delivery of the new and different system of service delivery. Most providers would assert and expect that it will take some time (of the order of 6 months) for the new system to settle down and be fully and most effectively operational. All providers will be doing their level best to be on the ground running with the new system on 1 July and we fully expect that most will do so if past experience is any guide.

The Department, to its credit, has taken considerable steps to effectively manage the transition process, to provide training and information resources to providers and to develop and deploy the information technology systems which underpin the new JSA system. Considerable progress on these fronts has been made since the last major system transition which occurred in 2003 and relevant Departmental personnel and the Minister are to be commended not only for their efforts but also for the approach they have taken in consulting, designing and implementing these aspects of the transition.

The transaction costs associated with the high level of provider turnover cannot be accurately determined without undertaking a detailed analysis of all of the providers concerned. Given that the costs of establishing a new site ranges between of the order of \$200 000 to \$400 000, those costs alone amount to a very substantial sum. Add to

this the costs of staff redundancies (which are estimated to involve as many as 4,000-5,000 staff – many of whom will have already secured new jobs with continuing or new providers but who will have been entitled to redundancy payments), losses of capital invested in premises fit-outs and a number of other transaction costs.

To facilitate the movement of staff from “losing” to “winning” providers, Jobs Australia established (at our own cost) a special web-site for that purpose and our team of industrial relations advisers provided extensive advice and assistance to providers as employers to ensure that they handled redundancies and other related issues in accordance with legal requirements and with care for and sensitivity to employee needs.

Other costs which also need to be considered are those incurred as a consequence of the reduction of the performance of the system associated with significant resources and attention being devoted to the preparation of tenders and the subsequent disruption which is now occurring as losing providers in many instances struggle to retain sufficient staff to deliver on current contract obligations, and continuing and new providers implement and bed-down the new system.

The scale and nature of the reforms being implemented have inevitably given rise to a degree of disruption and substantial transactions costs, which we argue have been greatly increased as a consequence of the high level of provider turnover arising from the tender process.

There is a compelling argument for research to be undertaken to accurately determine these costs to inform decisions about future approaches to procurement which might keep future contract transition transaction costs to an unavoidable minimum.

Another cost of the outcomes of the tender process for those nonprofit organisations with complete or substantial losses of business is the associated reduction in their ability to resource and finance other activities and services. In many cases, these services and activities are of substantial benefit to disadvantaged people and communities and represent another layer of value-adding which the community and the government derive from involvement of nonprofit organisations in the employment services market. Jobs Australia recently published a set of case studies, *10 Forces at Work*, which usefully illustrates a range of examples of nonprofit organisations adding value in this way. Hopefully, those nonprofit organisations which will be delivering JSA services, many of which have increased their business share, will continue to add value in this important way.

(e) Communication by the department to successful and unsuccessful tenderers, the communications protocol employed during the probity period, and referrals to employment services by Centrelink during the transition period;

The single element of the tender process which both the Minister and the Department have acknowledged was poorly handled was the communication of the tender outcomes to winning and losing tender applicants. The decision to send the initial email containing only an intimation of possible business, and the decision to only send this to potentially winning tenderers left everyone in uncertainty for far too long. In some instances staff of some providers first learned that they would be losing their jobs from the Department’s internet posting of the tender results. In other cases, providers which hadn’t received one of “those” emails were searching their junk mail to see if any such email had gone astray. When we became aware of these problems, contact was made with the Department to urge them to inform all tenderers of the interim results of their



tenders. The handling of this process demonstrated a lack of regard for them, their operating environments and their staff well being on the part of the Department.

Accountability and transparency and the probity frameworks designed to ensure these occur are critical elements of the honest delivery of public services. It was possible for the Department to meet all of its requirements and to do so in a way which enabled more and better timely information to be provided to all tenderers.

The need to design a smooth process that informed everyone involved as quickly and sensitively as possible was clearly foreseeable. The Department has undertaken a number of tender rounds with employment services providers since 1998 and has encountered similar problems before. This program change has clearly been large and potentially destabilising for the sector since consolidation of the programs and the number of providers was first mooted under the previous government. We suspect that the Department became so focused on the machinery of its procurement processes that it lost sight of the need for respectful and sensitive handling of the communication process – especially for those providers that were to receive bad news.

As noted earlier, the Department has gone to considerable lengths to consult on and to plan and implement the many aspects of the transition process. The Transition Reference Group (which the Department established well before the results of the tender were determined and on which Jobs Australia is represented) has been considering and providing advice on a myriad of different transition issues – including communication and messaging to job seekers about the new JSA system and arrangements for those being transferred to new providers. Given the number of job seekers being required to transfer, there will inevitably be some problems and hiccups in the system. The Department is very closely monitoring the transition process and is addressing issues and problems as they emerge.

(f) The extent to which the Government has kept its promise that Personal Support Program, Job Placement Employment and Training and Community Work Coordinator providers would not be disadvantaged in the process, and the number of smaller 'specialist' employment service providers delivering more client-focused services still supported by the Employment Services program;

The consolidation of the seven current programs into one has inevitably meant that many PSP, JPET and CWC providers will be exiting the employment services system. In some quarters there is speculation about a future need to recreate these programs to provide the focus and different approach to service that the particularly disadvantaged PSP and JPET clients need. Many of the organisations concerned had no desire or capacity to tender for the delivery of the full suite of services and others were unable, in the short time available to them, to negotiate and agree sub-contracting or other forms of partnership arrangements and agreements with other providers. Others, who might have been willing to pursue this approach if there were more certainty about the levels of business they might receive and the timing of that business, determined that the risks of doing so were too high.

Jobs Australia provided extensive and detailed legal advice to our members to facilitate the formation of effective sub-contracting and other forms of partnership and to try to ensure they remain effective and workable over the next three years.

Seventy four organisations have been contracted to deliver specialist services to job seekers with special needs. The challenge going forward for those organisations is for

them to attract sufficient job seekers and to secure outcomes for them in an increasingly difficult labour market. If they cannot do so, their viability will be in doubt. The Department will need to closely monitor these organisations over the life of the contract and especially in the transition phase.

In addition to the above groups exiting the employment services market, there is another group which we expect will be negatively impacted by the new JSA model – the sponsors of project-based Work for the Dole activities, who rely on resources provided by the government through the current CWCs to undertake projects of benefit to local communities. Although Work for the Dole is to be retained in the JSA model, our members consistently report that the fees and resources available for the Work Experience phase are generally insufficient to meet the costs of materials, equipment and other expenses associated with project-based activities. This means that hosted work experience placements are more likely to be the norm under the new model.

(g) The particular impact on Indigenous Employment Services providers and Indigenous-focused Employment Services providers;

We have no information which suggests there is any particular deleterious impact of the tender outcomes which systematically impacts differently or negatively on Indigenous Employment Services providers or Indigenous-focused Employment Service providers. The selection of 27 Indigenous organisations for delivery of JSA services is a positive development.

(h) The Employment Services Model, including whether it is sustainable in a climate of low employment growth and rising unemployment, and whether there is capacity to revise it in the face of changed economic circumstances; and

The Jobs Services Australia model has a number of key features which represent significant improvements over the current system, many of which are detailed and acknowledged earlier in this submission. In this context, bringing those most disadvantaged unemployed people into the system and placing significant financial incentive and performance ratings emphases on achieving real long term outcomes for them was a very positive and welcome step.

The Government designed the system and implemented the tender process well before there was any real inkling of the global financial crisis and the global recession which has resulted from it. This means the Government and the providers in the new system are faced with the daunting and unenviable prospect of trying to make a system designed in the best of economic good times work viably and effectively in the worst of economic bad times. The Government has already made a number of welcome adjustments to the system, including early entry of newly redundant workers to more substantial assistance, special assistance for apprentices and trainees, more flexible treatment of parents and carers, the new emphasis on education and training for young people who are unemployed and who haven't completed their formal education and incentives for people undertaking training. These are all welcome and positive improvements and adjustments to the system.

There remains more to be done, however. The unfortunate reality for many people who are already very long term unemployed or otherwise very disadvantaged in the labour market is that they will be highly unlikely to get jobs ahead of other more skilled and capable newly unemployed people with recent attachment to the labour market. Experience of past recessions makes it clear that many of the most disadvantaged

unemployed people who are in the unemployment queues when the recession bites are likely to remain in those queues for very considerable periods.

This means that the government will need to take substantive action on at least two further fronts.

The first is the inevitable need for the Government to adjust the payment structures in the JSA model to ensure that it remains financially viable without providers having to rely on revenues from Stream 3 and Stream 4 outcomes which they will not be able to achieve. This might well be able to be achieved without any or significant net additional expenditure by, for example, increasing outcome fees for Stream 2 job seekers and the introduction of a modest outcome fee for Stream 1 job seekers. Presumably this could be offset against lower than expected expenditures on Stream 3 and 4 outcomes.

The question for the Government is whether it should wait until some providers encounter serious financial difficulties before it takes action or whether it acknowledges and accepts there is a problem and takes action before potentially destabilising viability issues emerge.

The second is for the Government to invest more resources to provide a variety of different forms of paid work experience and training for the very long term and very disadvantaged unemployed people – over and above the unpaid work experience they might receive and for which the JSA model is presently designed. Paid work experience will provide attachment and engagement in the real labour market as well as a modest increase in the lower than poverty level incomes which unemployed people receive and would thus provide a positive incentive to participate. Steps need also to be taken to ensure that these groups get access to education and training through the Productivity Places Program and by other means. This education and training must be delivered in ways which meet their needs and should ensure that they have the basic education and relevant vocational skills they will need to compete successfully for jobs when the economy eventually moves out of recession.

One means by which the government could make a start on this would be to place priority of employment on these groups for a proportion of the jobs being generated from the Jobs Fund and other relevant elements of the various stimulus initiatives. Given the short term nature of these, the government will need to make other investments if we are to ensure that those people who are already most disadvantaged in the labour market don't stay stuck in that position for a long time to come.

- (i) Recommendations for the best way to maintain an appropriate level of continuity of service and ongoing sector viability while at the same time ensuring service quality and accountability and maximising the ancillary benefits for social inclusion through connection and integration with other services.

As noted in various parts of this submission, we propose that the Government should consider the adoption of a fundamentally different approach to procurement which avoids the substantial costs and dislocation which arise from the current tendering approach. We have had 11 years of the operation of Australia's contracted employment services market, with the associated maturing of the market and increasing sophistication and capabilities of providers and purchaser alike. It should be possible to develop a new procurement approach which better meets contemporary needs and

which actually gives effect to the real and balanced partnership relationships between purchaser and provider which we need to get the very best outcomes from the system.

Jobs Australia would be keen to help.