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Fairness and Equity

80% is destabilising

Requiring providers with contract level star ratings of one, two or three stars equates to 80% of the non-remote ESS business. Such wide spread tenders can't avoid having destabilising effects, which is acknowledged by DEEWR.

Competition is healthy

We are not advocating for a closed market. We agree that competition can foster innovation and effectiveness given the correct drivers of performance. We need to 'get the program and those drivers right' before taking it to market to avoid unintended and perverse consequences.

Deed performance management focuses on 1 and 2 stars

Under the current performance framework, it is possible that every single provider could be rated at three stars. Clause 134.3 of the DES Deed clearly indicates the 'average' is an acceptable level of performance.¹

134.3 Despite any other provision of this Deed, if at the completion of a formal performance assessment under clause 133.5 or 133.6, the Provider's Performance Rating:

(a) for an ESA is:

(i) in the lowest two ratings bands; or

¹ DEEWR, Disability Employment Services Deed 2010 – 2012, Page. 108

(ii) two ratings bands or more lower than any other Program Provider's rating in the ESA; or

(b) for a Site is:

(i) in the lowest two ratings bands; or

(ii) two ratings bands or more lower than any other Program Provider's rating for a particular site in that ESA,

DEEWR may, at its absolute discretion, decrease the Provider's ESA Business Share in the ESA accordingly.

Three stars is okay for JSA and DMS

It is not fair and equitable that JSA and DMS providers with From recent DEEWR correspondence to providers with extended JSA contracts:

Offering a deed extension for 3 star and above rating providers is an illustration of how the Government is actively responding to industry concerns about long term uncertainty and recognises the importance of maintaining stability in the employment services market. It also highlights the Government's ongoing commitment to identify unnecessary administration in employment services and streamline processes to ensure the highest quality employment services for job seekers.²

DES providers with a star rating of three are not accorded the same respect and regard and consequently face a great deal more uncertainty and confusion.

Value for money

The Financial Management Act requires DEEWR to be:

Satisfied that the expenditure of Commonwealth funding delivers the best value for money outcomes to the Commonwealth.³

DEEWR also states:

In the case of ESS we cannot know whether average (the mid-point on the 3 star range) represents value for money.⁴

How can DEEWR be sure four and five star performance represents value for money?

As the program matures, the national average has been steadily increasing, signifying better value for money each month. Currently DMS outperforms ESS by 1.1% in job placements, and ESS is trending higher faster. In July 11 DMS outperformed ESS job placements by 2.2%

² DEEWR Correspondence to JSA Providers, 21 September 2011

³ DEEWR, 2011, Submission to Senate Inquiry into the Administration and Purchasing of DES, page. 5

⁴ DEEWR, 2011, Submission to Senate Inquiry into the Administration and Purchasing of DES, page. 27

Great results, different treatment

Budget fact sheets published by DEEWR praise the comparable successes of JSA and DES. Both programs have resulted in (approx.) a 50% increase of outcome rates. Yet different procurement rules are being applied:

The number of DES job seekers who were placed in a job for at least 13 weeks is almost 50 per cent higher than under the Disability Employment Network and Vocational Rehabilitation Services that DES replaced.⁵

From the JSA budget fact sheet:

Employment outcomes for the most disadvantaged job seekers are up to 50 per cent higher than under the previous arrangements.

Based on this strong performance, the majority of JSA organisations delivering services in non-remote areas will have their current contracts renewed for a further three years until 30 June 2015.⁶

This is contrasted by DEEWR's more recent assertion:

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.⁷

Procurement or performance management?

Is this an admission from DEEWR that they view procurement as a performance management tool, in contrast to their own contract management framework? Why is 3 stars considered 'strong performance' in JSA and DMS and yet 'poor performance that will not be tolerated' in ESS?

Job seeker transition

It is estimated that 76,000 clients could be affected. Relationships that have developed over many years may be severed.

A transition program can have a reasonable amount of control around the client (particularly activity tested) but volunteers risk disengagement. DEEWR would have limited, to no control, over the employer and how they may respond to a change of provider.

Long-term relationships

Approximately 21,000 employers could be affected. There is a real risk of damaging the social infrastructure that has been developed since the 1980s.

In a DEEWR study, employers confirm the importance of relationships:

⁵ DEEWR Fact Sheet, Budget 2011 – 2012, Future arrangements for Disability Employment Services

⁶ DEEWR Fact Sheet, Budget 2011 – 2012, Future arrangements for Job Services Australia

⁷ DEEWR, 2011, Submission to Senate Inquiry into the Administration and Purchasing of DES, page. 8

Forum participants were enthusiastic about DES support continuing after 12 months of employment as they felt it was important to keep monitoring the employee's progress. They also commended the use of Ongoing Support Assessments saying it was encouraging to see how an employee had improved over time.⁸

Staffing

Many submissions indicate that staff will move from one provider to another. They will not be able to carry their long service leave, annual leave or personal leave balances with them. As the attractiveness of the industry diminishes, so too does the capacity of the people working in it.

Attrition

The employment services industry already has an unacceptably high attrition rate, estimated between 25% and 30%. That's nearly double the national average rate of 17.5% for large companies (less for smaller).⁹ DEEWR acknowledges large tenders have a destabilising effect on industry.

In order for DES to provide a high quality service that represents value for money for Government, there is a need for a stable and experienced workforce. A high attrition rate is detrimental.

DEEWR state staff will simply be picked up by another provider.¹⁰ This contrasts with the letter sent to JSA and DMS providers, where they extend contracts to avoid staffing issues.

In a study that DEEWR funded, the ASU recommended DEEWR move to an 'accredited provider' model to increase the attractiveness of the sector.¹¹

Presentist arguments

It is not fair and equitable to apply contemporary perspectives regarding competitive tendering and disregarding historical context. For example, by applying a value judgement to the ESS tender, 'it has never been tendered so it should be.' Historically it was not a program that went to tender, it started as a grass roots, community-driven initiative.

ESS isn't ready to take to market

18 months old

ESS is not DEN, it is not DMS. The program is 18 months old and lacks robust data to enable an evaluation.

⁸ DEEWR, 2011, Employer perspectives on recruiting people with disability and the role of Disability Employment Services, Canberra, Page 14

⁹ Australian Services Union, 2011, Employment Services: It's not just a job, Final Report, Canberra, Page 33

¹⁰ DEEWR, 2011, Submission to Senate Inquiry into the Administration and Purchasing of DES, page. 10

¹¹ DEEWR, 2011, Employer perspectives on recruiting people with disability and the role of Disability Employment Services, Canberra, Page 45

Unevaluated

The interim evaluation of DES did not contain twenty-six week outcomes, the defining measure of success. Citing the evaluation as evidence of program inefficiencies is flawed. Tracking individual job seekers in the final year of a stabilised contract and comparing their journey to job seekers in the first year of an issue-plagued new contract with different outcome measures is also questionable.

Why is an unevaluated specialised employment services program being put to market?

Unintended perverse consequences

The ESS program has a new performance framework, which it appears is having unintended consequences. Due to the reliance on star ratings for procurement we now see a perverse increase in the national average rates; rates which are not being driven organically or through best practice, with alarming consequences. It is very apparent when comparing placement rates from September 2010 with September 2011 (the last month to influence star ratings for proposed tender). Job placements increased by 66.35%¹²

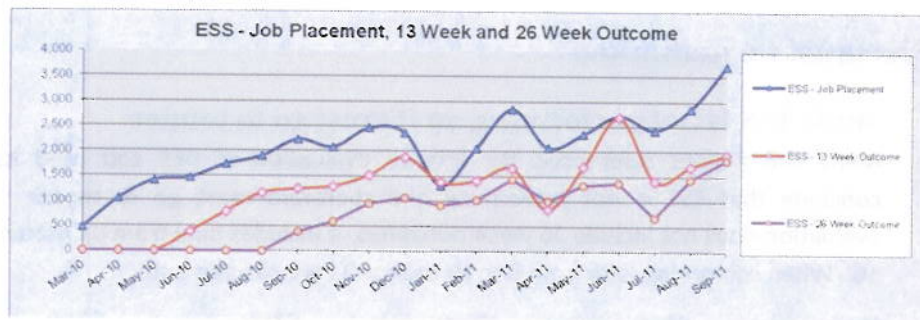


Figure 1: ESS Job Placements from September 2011 DEEWR Monthly DES Report

Less than 25% still working after 26 weeks

Less than one quarter of people who achieve a 26 week outcome remain in employment three months later.¹³ Is this the program we want to offer to people with disability? What is the definition of 'sustainable' the Government and the disability community want? We recommend a 52 week outcome.

DEEWR acknowledge issues with performance framework

To address unintended consequences, DEEWR acknowledge the need to review the performance framework, yet insist on using it in its current iteration for procurement purposes:

Given both the new DES model and the 'performance' Framework has now been embedded, it is important to actively review and redefine the Framework with stakeholders.¹⁴

¹² September 2010 = 2,223 Job placements, September 2011 = 3,698 Job placements

¹³ Brown, J, 2011, Working towards self-reliance: Three lessons for Disability Support Pension reform, CIS Policy Monograph 124, Centre for Independent Studies, Canberra

¹⁴ DEEWR, 2011, Submission to Senate Inquiry into the Administration and Purchasing of DES, page. 11

ESS is not ready for an influx of 'program of support' referrals

The Centre for Independent Studies released a paper concerning DSP reform and DES. The author warns policy-makers that the program is not ready for an influx of referrals:

Rigorous evaluation must be undertaken to ensure the program is effective before being extended to DSP recipients more widely. Small, niche services may have trouble scaling up. DES must be adequately funded: more resources are needed to place more severely disabled jobseekers.¹⁵

It is too soon for procurement

Any procurement must wait until ESS has been evaluated; this is scheduled for release in 2013. It is too soon.

Myths must be debunked

Myth: ESS is not performing, so it must go to tender

Many submissions referenced the interim evaluation of DES and used its findings to conclude that ESS is not performing and therefore must go to tender. The interim evaluation does not include 26 week outcomes, it includes data from 01 March 10 to 31 Dec 10. When comparing data from Dec 10 to June 11 we can see that:

- ESS 13 week full outcome rates **increased** by 47%
- ESS 26 week full outcome rates **increased** by 98%¹⁶

The constants in this equation are the providers and the job seekers. The variable is the program. In budget fact sheets, Government praises DES for achieving 50% higher outcome rates than previous contracts. In their response to this Inquiry, DEEWR described the improvements as 'modest'.

¹⁵ Ibid

¹⁶ DEEWR, 2011, Submission to Senate Inquiry into the Administration and Purchasing of DES, page. 26

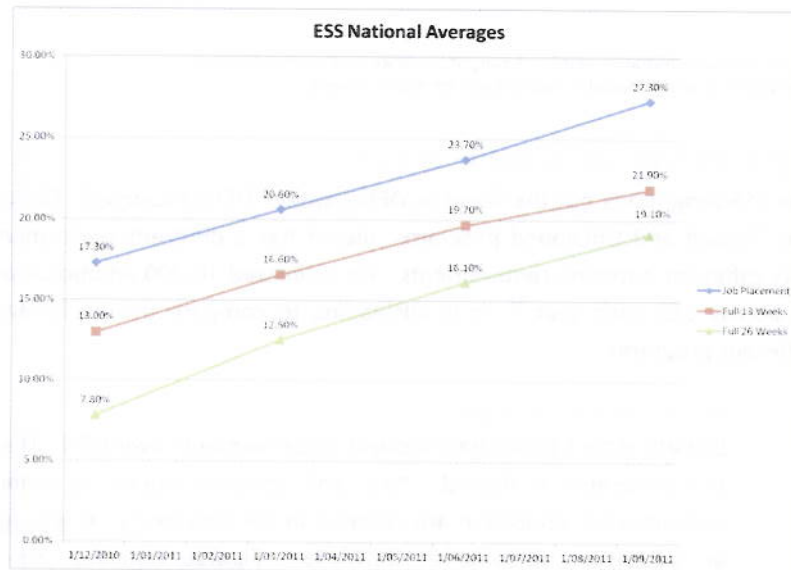


Figure 2. ESS outcomes continue to increase

Myth: ESS has never been up for competitive tender

This is a presentist argument. Disability employment did not fall under DEWR until 2005/6. There have been two distinct opportunities for new players to enter the disability employment market. In 2005 a competitive open tender was conducted for the DEN Uncapped program (now rolled into DES-ESS). In 2009 a competitive tender was conducted for the DMS program, which allowed DEEWR to test the market and gauge the interest of new entrants.

Myth: Competitive tendering improves outcomes

We do not believe DMS performance is directly a result of the competitive tender. Only 45% of DMS business went to open tender in 2009. As of 21 October 2011, the difference in job placements between ESS and DMS was 1.1%.

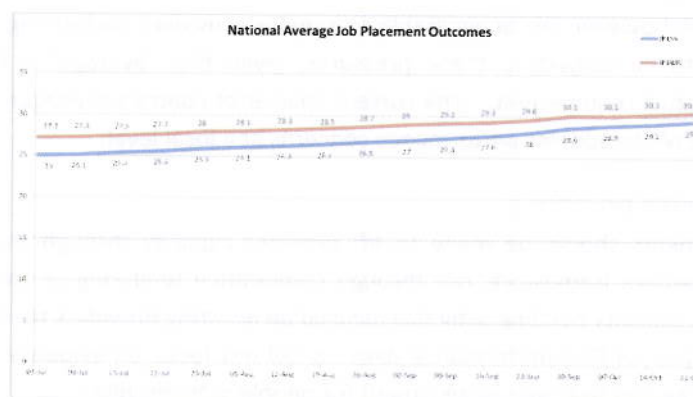


Figure 3. ESS is closing the gap on DMS

It seems that competitively tendering 45% has resulted DMS being 1.1% more effective than ESS. Given the massive cost of tendering, it is debatable this represents value for money. Are DEEWR being disingenuous making this conclusion?

Myth: DES is comparable to DEN

The ESS program is not the same as DEN Capped, DEN Uncapped. ESS combines cohorts of the Capped and Uncapped programs, plus it has a different performance framework and very different outcome requirements. An estimated 10,000 additional people are expected to access DES each year.¹⁷ It is misleading to compare the performance of significantly different programs.

Apples aren't oranges

DEEWR state ESS has had 'modest' improvements over DEN. The data used to make this statement is flawed. You can't compare apples to oranges. For example, outcomes for education are counted in the DES totals. It was not possible to claim an education outcome in DEN/VRS. Figures reported are not regressed, an important factor in star ratings. Other caveats are missing: DES has higher outcome benchmarks than DEN.

Poor performance

Performance management, not procurement

Disability Employment Australia support measures that will address poor performance, in fact we call on DEEWR to provide appropriate and timely contract performance-management to ensure that service levels remain at an acceptable level with any issues of poor performance addressed within an agreed timeframe or business is reallocated. Every client has a right to a quality service. A provider whose contract level performance is well below average should find themselves being called to account and redress.

Average is not poor

It is not however fair or equitable to require providers performing at 'the average' (three stars) to be subject to these pressures, given that 'average' is the defined acceptable contractual requirement. The current charter of contract management includes provisions for DEEWR to address performance concerns at a local level.

Capacity building

Investments should be made to lift provider capacity through the existing performance management framework, not through competitive tendering or ad-hoc funding measures. Recent capacity building activities focused on assisting providers to navigate the complicated 'black box' of DES performance data. It did not focus on evidence-based, person-centred, best practices to create employment for people with disability.

¹⁷DEEWR, 2011, Submission to Senate Inquiry into the Administration and Purchasing of DES, page. 10

Appendix

Our overarching message to the Inquiry (and to the Government) is that more innovative procurement and service delivery models exist that will better achieve the Government's stated objectives.¹⁸ These innovative methods need to be examined as alternatives to tendering.

The Government should postpone the tender process until 2015 to allow adequate time to explore alternative and innovative procurement options to determine value-for-money, having regard to the characteristics and circumstances of DES-ESS. This will also allow the DES-ESS program to have generated robust outcome data to draw meaningful conclusions, and the evaluation scheduled for June 2013 to be completed.

However, if the Government does proceed with the tender in 2012, the following changes are essential prior to commencement:

- **Only one and two star providers should be required to go to tender.** This achieves the Government's stated objectives of testing the market, allowing for entry and removing poor performers. Importantly, it achieves this aim with a lower risk profile and less chance of destabilising the sector and negatively effecting client employment outcomes.
- **Meaningful quality measures need to be included in the Performance Framework.** The DES-ESS Performance Framework is narrowly based on short-term throughput measures that are poorly suited to DES-ESS and are also vulnerable to manipulation. Including quality measures will ensure that an accurate value-for-money assessment is possible and those providers best able to meet the needs of clients are awarded contracts. See **Error! Reference source not found.** on page 19 for our recommended changes to the Performance Framework.
- **The minimum contract term increased from three to five years.** This represents a more efficient use of provider and Government resources; reduces the destabilising effect of continuous three year tenders; and achieves the Government's stated objectives.

¹⁸ As set out in Terms of Reference (c) and articulated in a letter from Minister Ellis to Disability Employment Australia, 26 July 2011

