

**Australian Government response**

**to the**

**Senate Education, Employment and  
Workplace Relations References  
Committee's Report:**

***DEEWR tender process to award  
employment services contracts***

**January 2010**

## Introduction

1. The Senate referred the inquiry into the *DEEWR tender process to award employment services contracts* (the Inquiry) to the Senate Standing References Committee on Education, Employment and Workplace Relations (the Committee) on 13 May 2009.
2. The Committee report, *DEEWR tender process to award employment services contracts*, (the Report) was tabled on 25 June 2009.
3. The Committee majority made seven recommendations regarding opportunities that could be considered in future employment service tender processes.
4. The Government Senators' report welcomed the opportunity for the Inquiry to verify the probity of the competitive tendering process run by the Department of Education, Employment and Workplace Relations (DEEWR) which ensured a level playing field for all tenderers for employment services.
5. The Australian Government's response to each recommendation is outlined on the following pages.
6. The development and introduction of Job Services Australia represented a major change to employment services in Australia. Job Services Australia folds seven separate employment services programs into an integrated service to provide job seekers with a flexible, more personalised service. The services promote stronger ties between employment services providers and employers to ensure job seekers have the skills needed to fill vacancies. Job Services Australia is designed to deliver a better service that is capable of responding to changing economic conditions.
7. Job Services Australia providers work with job seekers to negotiate an individually tailored pathway to employment. The Employment Pathway Plan identifies a mix of vocational and non-vocational activities that job seekers need, and providers deliver, to achieve employment. This is supported by the Employment Pathway Fund which is a flexible pool of funding available for use by providers to purchase assistance to address vocational and non-vocational barriers and to provide work experience activities.

8. The design of Job Services Australia involved an extensive consultation, where the Government sought and listened to the views of job seekers, providers, industry representatives, employers and other stakeholders. The consultation involved:
  - initial consultations where the former Minister for Employment Participation, the Hon Brendan O'Connor MP, wrote to stakeholders seeking their views on the future directions for employment services
  - the release of the discussion paper, *The Future of Employment Services in Australia*, inviting submissions and comments on new service arrangements based on the views expressed in the initial consultation
  - the *Exposure Draft of Purchasing Arrangements for the new Employment Services 2009-12* which detailed the design and purchasing arrangements for employment services, with further consultations held around Australia seeking feedback and comments.
9. The purchasing arrangements, including the conduct of the tender, were part of the consultation process. Changes were effected based on the feedback received. The entire tender process was scrutinised by an independent, external Probity Adviser. The Probity Adviser was satisfied that, at all stages, the assessment process followed by DEEWR met all the requirements.
10. The Probity Adviser gave an unqualified sign-off on the tender process, describing the conduct of the process as representing "*a high benchmark for the conduct of Commonwealth procurements in that DEEWR not only met, but in many cases exceeded, relevant probity principles and standards*". The process was conducted at arm's length from government at all times.
11. Tenders were received from large and small organisations, including a mix of for-profit and not-for-profit organisations and a mix of generalist and specialist bids from these organisations. Tenderers included a number of Indigenous and community organisations bidding in their own right, as part of a sub-contracting arrangement or in a community-based partnership.
12. The outcomes of the tender resulted in a diverse range of national and local providers, including a large number of providers delivering specialist services.
13. For the first time since 1998 community-based organisations feature significantly in the profile of providers of employment services with an increase in the number of such organisations who have business shares placing them in the twenty largest employment service providers.
14. The proportion of not-for-profit and for-profit organisations contracted in Job Services Australia is broadly consistent with previous arrangements. Around 140 organisations were awarded Job Services Australia business in Stream Services as a single entity or part of a tendering group. Of those, 79 per cent are not-for-profit and 21 per cent are for-profit.

15. The implementation of Job Services Australia represents significant reform to the delivery of employment services across Australia. Transition was a significant part of the planning and preparation of Job Services Australia and featured as an integral part of the consultation process on the design and development of the services. There was comprehensive planning and engagement with stakeholders across all aspects of the transition.
16. Job Services Australia has seen the roll out of new services, a redeveloped IT system and provider staff training to help job seekers get the help they need. These all contributed to meeting the transition principles of an on-time start with least disruption to job seekers, providers and employers. The smooth transition has been a direct result of the planning and preparation.
17. Consistent with its commitment to consult with the industry on reforms to the employment service market, the Government has established the employment services Industry Reference Group to provide advice to the Minister for Employment Participation on:
  - views of the employment services industry and other stakeholders on future purchasing for employment services
  - the conduct and approach to purchasing and related processes in the interest of continuous improvement, including advice on timing and approach to the single mid point business allocation process for the Employment Services Deed 2009-2012, and
  - relative weightings of key performance indicators in future purchasing and related business reallocation processes.

## Recommendation 1

*The committee majority recommends that in any future tender process a response time for questions to be answered should be indicated and adhered to by DEEWR.*

## Response

18. Supported in part. DEEWR will continue to review the arrangements for future tenders to ensure the best possible arrangements are in place. DEEWR supports the need for timely and appropriate responses to potential tenderers. Questions submitted during a tender period can range from a short straightforward request, requiring minimal information to a complex request requiring detailed policy analysis and interpretation of the policy intent. This variety does not necessarily lend itself to setting a single specific timeframe for response where the quality of the response is critical.
19. The *Exposure Draft of Purchasing Arrangements for the new Employment Services 2009-12* (Exposure Draft) provides that 'a response to a request for clarification or a question will be provided as soon as practicable'. The same approach was used for the *Request for Tender for Employment Services 2009-12* (Request for Tender).
20. The average time taken to answer questions during the tender period was 4.6 days (other than those questions which were answered immediately during the course of a telephone call to the Employment Services Purchasing Hotline). The time taken to respond was dependent on the complexity of the question. The accuracy of each response was a priority to ensure tenderers received the correct information. All responses were required to be cleared by a representative of the independent, external Probity Adviser.
21. Wherever possible, the Employment Services Purchasing Hotline responded directly to each caller in the course of the call. It was only when an issue raised by a caller was a new question that had not previously been raised or required further action or clarification, that the caller was requested to submit the query via email. This was to ensure that the issue was appropriately documented and addressed and then published on the internet to ensure the response was accessible to all potential tenderers.

## Recommendation 2

*The committee majority recommends that DEEWR review its communication policy with unsuccessful tenderers to ensure there is sufficient time to ensure tenderers' staff are appropriately briefed and that debriefing sessions are more informative and helpful to tenderers.*

## Response

22. Noted. Communication techniques are designed and tailored for each individual tender process conducted. DEEWR will continue to carefully consider the appropriate communication strategies as part of the design of each future tender process.
23. The Request for Tender provided for an early '*without prejudice*' announcement of preferred tenderers. This was outlined in the supporting information sessions.
24. An early advice process provided the opportunity to confirm matters with preferred tenderers prior to the final decision. It also gave potentially successful and potentially unsuccessful tenderers alike an opportunity to develop strategies for informing staff once the final decisions were announced.
25. In accordance with the published probity principles for the tender process, DEEWR ensures that the release of all information about the process is fair and equitable, and does not unfairly advantage or disadvantage any tenderer. That is why advice or announcements to tenderers are provided to tenderers, as far as practicable, at the same time.
26. Although some witnesses at the Senate Inquiry hearing stated that their tender debriefing was not helpful, DEEWR and the National Employment Services Association received positive comments about the quality and usefulness of the debriefing process from organisations that had received feedback through this process.

### Recommendation 3

*The committee majority recommends that DEEWR monitor and report progress on the measures taken to minimise disruption for job seekers, particularly those in stream 4.*

### Response

27. Supported in principle. Minimising disruption to job seekers during the transition to Job Services Australia was a key objective for DEEWR. This objective was included as a key discussion point in the Discussion Paper on the *Future of Employment Services in Australia*, released in May 2008. Arrangements for the transition to Job Services Australia were described in the Exposure Draft and the Request for Tender.
28. The overarching principles for managing the transition included:
- transition activities had to support the commencement of Job Services Australia on time on 1 July 2009
  - transition activities had to be consistent with the design of Job Services Australia, while honouring existing contractual obligations
  - all eligible job seekers must be referred to new providers contracted under Job Services Australia as efficiently and sensitively as possible.
29. Strategies to ensure minimal disruption to job seekers included:
- job seekers remaining with their same provider, if their provider was going to deliver Job Services Australia services
  - ensuring job seekers continued their activities during the transition period (for example, employment, training, work experience, Work for the Dole, education)
  - an awareness campaign between May and June 2009 advising job seekers by personal letter of the introduction of Job Services Australia, who their provider would be, as well as their ability to select an alternate provider if they wished to do so. The letters provided advice on the DEEWR Customer Service and Centrelink interpreter services lines. This enabled job seekers, including those with low literacy skills, to speak to someone about their requirements in the transition to Job Services Australia
  - a dedicated customer service line to assist job seekers with queries and to transfer job seekers to another provider if they requested
  - access for Job Services Australia providers to job seeker contact details prior to 1 July 2009. This allowed for early engagement with job seekers
  - the Customer Service Line, the public website and the public transition question and answer mailbox, which all assisted in answering queries and mitigating any job seeker concerns.

30. Additional strategies were developed for Stream 4 job seekers who have severe barriers to employment. This included all job seekers from the previous Job Placement Employment and Training Program and the majority from the previous Personal Support Program. The strategies included;
- introductory meetings for job seekers transferring to new Job Services Australia providers were provided wherever feasible and with priority given to the most vulnerable
  - previous Personal Support Program job seekers on the waitlist being provided with a second letter to give them further assurance that their Job Services Australia provider would be contacting them soon.
31. Monitoring associated with the transition commenced in May 2009. To support the strategies, providers had access to special reports that facilitated the early engagement of job seekers with the new arrangements, as well as direct communication with job seekers. Monitoring the progress of initiatives includes the following information (as at 30 September 2009):
- over 2100 sites were delivering employment services across the country
  - over 50 per cent of job seekers remained with their same provider at the commencement of Job Services Australia
  - of the job seekers who transitioned into Job Services Australia from previous employment programs who were due to commence immediately, more than 99 per cent had commenced, had an appointment scheduled or have appointments scheduled with providers
  - more than 35 000 work experience activities had been established, most of which involved some form of accredited training
  - more than 115 000 job seekers transitioned directly into the Work Experience phase of Stream Services at the commencement of Job Services Australia, and
  - there were over 63 000 job placements, with 40 per cent of these placements for Stream 3 and 4 job seekers.



## Recommendation 4 (1)

*The committee majority recommends that ANAO review the performance of the system during the transition period.*

## Response

32. Noted. The Auditor-General is an independent officer of the Parliament who, assisted by the Australian National Audit Office (ANAO), is responsible for undertaking performance audits of Australian Government entities. The Auditor-General can therefore choose, at his discretion, the timing and coverage of performance audits of any program administered by DEEWR. In its Audit Work Program for 2009 the ANAO has indicated that, in the medium term, it will consider its audit coverage of DEEWR's administration of Job Services Australia.

## Recommendation 4 (2)

*The committee majority recommends that:*

- *The Government promptly provides answers to those questions taken on notice during the Senate Estimates and in the House of Representatives; and*
- *If those answers do not satisfactorily demonstrate the complete probity of the tender process, it be referred to the Auditor-General for further investigation.*

## Response

33. Noted. All questions relating to the Inquiry taken on notice during Senate Estimates hearings or in the House of Representatives by the time the Report was tabled (25 June 2009), have been answered.
34. The external, independent Probity Adviser monitored the purchasing process throughout and provided an unqualified sign-off stating that the process represented "a high benchmark for the conduct of Commonwealth procurements in that DEEWR not only met, but in many cases exceeded, relevant probity principles and standards." The Australian Government considers that the probity of the tender process was met.
35. The Auditor-General may choose at any time to review any area of public administration within the scope of the *Auditor-General Act 1997*. In its Audit Work Program for 2009 the ANAO has indicated that, in the medium term, it will consider its audit coverage of DEEWR's administration of Job Services Australia.

## Recommendation 5

*The committee majority recommends that the design of the tender process be reviewed to ensure that in future processes:*

- *Additional community benefit of not-for-profit providers can be recognised in the process;*
- *Additional selection techniques such as interviews, referee checking or site visits be used by DEEWR to facilitate greater dialogue with providers to verify claims made in written documentation;*
- *The diversity of the sector is maintained with greater support being given to smaller organisations to participate; and*
- *Past performance is given appropriate weighting.*

## Response

36. Supported in principle. The Job Services Australia purchasing process followed the requirements contained in the *Commonwealth Procurement Guidelines* published in January 2005. The principle of achieving value for money for the taxpayer through a robust, fair and competitive process, conducted under and in accordance with the governing legislation, guidelines, and policy parameters is the primary consideration for employment services purchasing.
37. A tender process for employment services must be designed to select the best organisations to deliver those services being purchased by the Commonwealth. It should be noted that to the extent any additional services offered by a tenderer provided a better service to job seekers and/or employers (and were articulated in the tender response) they were taken into account in the assessment process. The Request for Tender enabled tenderers to submit a substantial response to show their ability to deliver employment services. The written tender documents gave each tenderer the opportunity to present their claims against the selection criteria equitably and in a way which allowed comparisons between competing claims.
38. Consistent with its commitment to consult with the employment services industry, and in the interest of continuous improvement, the Industry Reference Group has been established to provide advice to the Minister for Employment Participation on future procurement and associated processes for employment services, including the single mid-point business allocation process and the relative weightings of key performance indicators in purchasing and business reallocation.
39. The Government values the significant contribution to the Australian community made by not-for-profit organisations. It recognised the need for strong local community linkages throughout the design of Job Services Australia and the associated tendering processes (including through the selection criteria). As stated in the introduction, community-based organisations feature significantly in the profile of Job Services Australia providers and the proportion of not-for-profit organisations is broadly consistent with previous arrangements.
40. On 17 March 2009 the Government commissioned the Productivity Commission to undertake a study on the contributions of the not-for-profit sector, reporting in January 2010. The Commission released a draft research report in October 2009.

41. The committee considered whether additional selection techniques should form part of the purchasing process. Selection techniques such as interviews of, or presentations by, tenderers could increase the workload and cost to tenderers, particularly small organisations. Additional selection techniques of this kind also have the potential to create uncertainty, in determining the outcomes of the procurement and in relation to perceptions of unequal treatment of individual tenderers.
42. In maintaining the diversity of the sector, the Committee recommended greater support being given to smaller organisations. The discussion paper, *The Future of Employment Services in Australia* released in May 2008, encouraged small providers to tender or to form alliances with other organisations or for individuals to submit a tender as part of a tendering group. Funds were provided to the National Employment Services Association to provide information and support to small and specialist tenderers to assist them to form tendering alliances, particularly for Job Services Australia. The tender outcomes saw a number of community based organisations feature in the profile of Job Services Australia providers. This in turn places employment services business in the hand of smaller / local providers.
43. In relation to past performance, feedback received through the consultation process with the employment services industry and other stakeholders provided a clear message that the weighting placed on past performance should be counter balanced by a strong emphasis on ability to deliver results against the new services. The thirty per cent weighting for demonstrated performance in similar services was published in the Exposure Draft of the Request for Tender.
44. The past performance of tenderers in other programs was not directly comparable to the services being purchased through the Job Services Australia procurement. The shift in the focus of employment services to the single multi-stream contract meant that past performance, while an indicator of performance under former arrangements, could only be a part of the assessment process and it was weighted appropriately and clearly at thirty per cent.
45. Overall, organisations needed to demonstrate their strategies and capacity to deliver the new services. Job Services Australia has a greater focus on tailoring services to all eligible job seekers, with stronger emphasis on skills development with improved connections with vocational education and training and other program providers and local communities. Success depended on the ability to deliver the new services, as well as performance, coverage, range of business and diversity of choice for job seekers.

## Recommendation 6

*The committee majority recommends that the design of the tender process also [be] referred to the Productivity Commission.*

## Response

46. Not Supported. The Productivity Commission (the Commission) provides analysis and advice on broad economic, social and environmental issues affecting the welfare of Australians. The Commission has limited resources to undertake a number of projects each year. As such, given the broader policy issues that the Commission usually addresses, the nature and scope of the proposed review and the competing demands for its resources, it would not be an appropriate reviewer for this particular task.
47. Tender processes can vary according to the nature of goods or services being sought. The Government does not see value in adopting a "one size" fits all approach to tenders. Any future purchasing processes for employment services will be decided by the Government of the day based on the most appropriate arrangements for the services being purchased at the time and in accordance with the prescribed procurement framework.
48. Consistent with its commitment to consult with the industry on reforms to the employment service market, the Government has established the employment services Industry Reference Group to provide advice to the Minister for Employment Participation on:
- views of the employment services industry and other stakeholders on future purchasing for employment services,
  - the conduct and approach to purchasing and related processes in the interest of continuous improvement, including advice on timing and approach to the single mid point business allocation process for the Employment Services Deed 2009-2012, and
  - relative weightings of key performance indicators in future purchasing and related business reallocation processes