

Chapter 4

The tender process continued

Preferred tender process

4.1 Some submissions focussed criticism on DEEWR's decision to indicate in mid-March 2009 which tenderers had been designated preferred providers so any issues could be raised with DEEWR. NESAs advised that the preliminary advice did not provide sufficient information for organisations to plan adjustment or briefing strategies. In addition, the advice was subject to probity consideration which meant that providers felt they were unable to inform staff. Further, as the preliminary advice became public, information was misinterpreted by staff which added to their anxiety. NESAs suggested that preliminary advice should have been directed to the nominated contact person for each tender rather than being posted on the DEEWR website.¹

4.2 DEEWR said that it was understood by tenderers that there was always the possibility that another provider may be offered business. DEEWR was able to offer business to some organisations originally not contacted through this process once it was in receipt of the latest unemployment figures.²

Committee view

4.3 The constant referral by witnesses to the 'counterintuitive outcomes' indicates that the tender process itself may not be adequate to deliver the results required to minimise disruption for not only providers and their staff but more importantly for job seekers. This is even more important given the current economic conditions and increasing numbers of job seekers.

Late addition of extra providers

4.4 The committee majority notes that there are several unanswered questions with respect to the late addition of extra providers after the preferred tenderers were announced. These arise from the decisions made by the department to bring in extra providers which were not preferred tenderers in a couple of ESAs and the communications between tenderers and the then Minister for Employment Participation.

4.5 A timeline of the decisions made during 2009 is helpful:

1 NESAs, *Submission 13*, pp. 9-10.

2 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 36.

- 5 March – Departmental briefing to Minister for Employment Services on preferred tenderers
- 16 March – Departmental email to preferred tenderers for each Employment Service Area
- March – Regular progress reports provided to the Minister on all Employment Service Areas
- 31 March – Financial decisions made by Department
- 1 April – Overall results announced by Minister for Employment Participation
- 2 April – Providers began receiving notifications by email around 11am
- 2 April – Results available on website at 6pm
- 9 April - Official letters and offer draft contract

Business offers to providers who were not preferred tenderers

4.6 One unresolved issue remains Employment Service Areas where the department decided to bring in a new provider after the preferred tenderers were advised. These decisions were presumably taken between 16 March (preferred tenderer notification) and 31 March 2009 (final decision).

4.7 Despite repeated questions in Senate Estimates, during this inquiry, in the House of Representatives and in Senate Question Time, neither the relevant Ministers nor the department have provided to Parliament or this committee the list of ESAs where this occurred or the specific reasons for the late additions. This lack of information remains of concern. The committee would also be interested to know which providers were added and how they were chosen.

4.8 On 1 June 2009, Senator Cash asked some specific questions in Senate Estimates of DEEWR:

Senator CASH—Were any providers initially told that they had not received business in a particular ESA, only for the department to go back and inform that they had?

Ms Golightly—We had a preferred tenderer process back in mid-March, whereby—as in many other large tenders, certainly at the Commonwealth level—we advised those suppliers who at that stage were preferred. This period is there as a risk minimisation strategy to ensure that they can raise with us or we can raise with them any issues that they might have, particularly about capacity if they are using many subcontractors et cetera. But, depending on those negotiations and how they result, there is always the possibility that somebody else may be offered business at the end of that. Because we had just received the latest unemployment figures, we also did a final review to make sure that we had enough capacity in the system, so there may have been one or two providers who did not get a preferred tenderer letter but were offered business in the final allocation.

Senator CASH—Are you aware of any incidents where that actually did occur as opposed to where it could have occurred?

Ms Golightly—Yes, Senator.

Senator CASH—Can I ask you to outline that incident.

Ms Golightly—There were a couple of ESAs where we did decide to bring in a new provider in addition to the ones that had already been offered business.

Senator CASH—What happened to the ones that had already been offered business?

Ms Golightly—They still had their business. This was over and above.

...

Senator CASH—When you said that there were a couple of ESAs, which ESAs were you specifically referring to?

Ms Golightly—I will take that on notice, just because I do not have the list here.³

4.9 The committee is not aware of any answer being provided to Senator Cash's question.

4.10 On the same day in Senate Estimates, DEEWR undertook to provide the details of the discussions in those ESAs where it was decided to bring in a new provider:

Senator CASH - I have two more questions. Ms Golightly, we are going to go back to the ESA. Regarding the ESA that we discussed where it was decided to bring on further providers, was there any discussion between the department and the providers that occurred prior to the offer being made to them?

Ms Golightly—There would have been through the allocation process. We often clarified parts of the tender with providers.

Senator CASH—Can you outline the nature of those discussions?

Ms Golightly—They could be, for example, anything to do with their financial statements. It could be a clarification around what bid ranges and sites they are offering. There are a whole range—

Senator CASH—You said ‘it could be’. Are you able to actually give me specific examples of the nature of those—

Ms Golightly—All of those examples I am giving from memory. We can take on notice the precise details—

Senator CASH—And provide details of the nature of the discussions.

Ms Golightly—but both of those things would have been examples. We do clarify with people some queries we might have on their financials but also their bid strategies.

Senator CASH—How long prior to the offers being made did those discussions occur—days, weeks or months?

Ms Golightly—They can happen throughout the whole process from the minute that we start opening the tenders and realise that perhaps the financials or something, for example, need clarification right up until the final negotiations before the contract is signed. It happens all through the process.⁴

4.11 Senator Cash went on to ask about these representations:

Senator CASH—If a decision were changed as a result of potential representations and an additional business allocation were given, would that be wrong?

Ms Paul—There were no decisions changed as a result of representations. We can absolutely assure you of that.

Senator CASH—Sorry, what was that?

Ms Paul—There were no decisions changed as a result of representations. We can assure you of that. Probity was with the team all the time. The probity report goes to that too. So representations can be made. Representations can be noted. Representations are not acted on by the team.⁵

4.12 On 15 June 2009, during the consideration in detail stage of the Budget Appropriations in the Main Committee of the House of Representatives, the Member for Boothby, Dr Andrew Southcott MP, asked of the Minister for Employment and Workplace Relations:

Dr SOUTHCOTT—I would like to ask the minister a question about Job Services Australia.

With respect to the Job Services Australia tender, is the minister aware of any employment-services providers who were not preferred tenderers in a specific employment-service area on 5 March, and who were not advised by email in the department's communication of 16 March that they were preferred tenderers, but were subsequently offered business in that employment-service area on 2 April? Can the minister provide the reasons for these employment-services providers being offered additional business in each ESA in which this occurred? How were the employment-services providers, who were invited in at this stage, chosen? How were the ESAs chosen? Who made this decision? Can the minister advise in which employment-service areas this occurred?

4 *Senate Estimates Hansard*, 1 June 2009, p. 39.

5 *Senate Estimates Hansard*, 1 June 2009, p. 43.

...

Ms GILLARD—In relation to the very specific question asked by the shadow minister for employment participation, training and sport, the member for Boothby, I can say that we will provide him with a detailed answer to that question. Obviously it goes to a set of communications which, he would appreciate, I do not have available to me here in the Main Committee, but I can give an undertaking to provide an answer to him expeditiously, and we will.⁶

4.13 In question time in the Senate on 16 June, Senator Fifield asked of the new Minister for Employment Participation:

Senator FIFIELD—My question is to the Minister for Employment Participation, Senator Arbib. With regard to the new Job Services Australia contracts, will the minister confirm that there were employment services providers who were deemed not to be preferred tenderers in a particular employment service area on 5 March yet who were subsequently offered business in that employment service area on 2 April?

Senator ARBIB—Thank you, Senator Fifield. I know you have had an interest in this area. Mr President, I am unaware of what Senator Fifield is referring to, but I am happy to attempt to find that information for him.⁷

4.14 It troubles the committee majority that none of these questions taken on notice have to date been answered. Clearly the issues being raised go to the issue of probity of the tender process and explore whether there was any ministerial intervention in a process that the committee was told was conducted entirely independent of government. Until answers are forthcoming, no conclusive view can be formed as to whether the process was indeed conducted in an entirely fair and impartial way.

Communication protocol and probity guidelines

4.15 On 11 June in the committee hearing, Senator Fifield asked about contact between tenderers and the Minister's office during the purchasing period:

Senator FIFIELD—Do you have any knowledge of contact between the minister or his office and Mission Australia prior to 2 April during the tender process?

Ms Golightly—The minister is entitled and able to continue to meet with providers all through the process, but he received a probity briefing and we put processes in place whereby anything in relation to the tender was actually referred straight to the department. The office and the minister were very diligent in doing so.

6 *House of Representatives Hansard*, 15 June 2009, pp. 108-109.

7 *Senate Hansard* 16 June 2009, p. 16.

Senator FIFIELD—One would hope that they would be. Again I ask: are you aware of any contact between the minister, his office and Mission Australia before 2 April?

Ms Golightly—I personally would not be aware of specific instances, but I am sure the minister was continuing to discuss ongoing business with all of the providers.⁸

4.16 The department's communication protocol states:

- All tenderers will only use the process set out in the Exposure Draft to contact DEEWR for the purpose of querying or clarifying any aspect of the purchasing process.
- DEEWR will not consider unsolicited references or submissions on behalf of providers or tenderers outside those provided for in the purchasing process.
- DEEWR, persons directly or indirectly involved in the purchasing process acting for DEEWR, and other persons who have been identified as being in positions of potential influence over the operation of the tender process will not enter into discussions or otherwise engage in any activity with tenderers, or other persons with an interest in the purchasing process, where this could be perceived as influencing the operation of the purchasing process.
- Views on individual tenderers or tenderers must not be expressed to DEEWR in a way that could be perceived as an attempt to influence DEEWR to favour, or disfavour, any tenderer.
- Details of any approaches by or on behalf of tenderers or tenderers will be fully documented. Communications or conduct suspected of involving a breach of the probity of the purchasing process or involving illegality will be investigated.⁹

4.17 The committee was unable to investigate this contact between a tenderer and the Minister's office due to the reporting time frame. As the Communication Protocol is silent on the issue of logistical contact, the committee does not feel able to make any definitive conclusion about possible contact between the Minister's office and tenderers. We do feel, however, that this raises further questions which go to the heart of this inquiry.

4.18 The committee majority notes that the Senate asked for relevant documentation on its Return to Order Motion of 18 June 2009:

That there be laid on the table by the Minister for Employment Participation, no later than 5 pm on Monday, 22 June 2009:

8 *Committee Hansard*, 11 June 2009, p. 87.

9 DEEWR Communication Protocol, additional information, 22 June 2009.

- (a) all communications and logs of communications, including emails, between tenderers for the Employment Services Contract 2009-12 and the former Minister for Employment Participation (Mr O'Connor) and his staff;
- (b) all purchasing related inquiries, including records of phone calls and emails which were made to the former Minister for Employment Participation and his staff and the responses provided;
- (c) all communications and logs of communications between current service providers and tenderers during the probity period for the Employment Services Contract 2009-12 and the former Minister for Employment Participation and his staff; and
- (d) all documentation relating to any meeting with current service providers or tenderers for the Employment Services Contract 2009-12 and the former Minister for Employment Participation and/or his staff.

Question agreed to.¹⁰

4.19 This information has not yet been tabled by the government.

Announcement of results

4.20 The tender results were announced by the then Minister for Employment Participation, Hon Brendan O'Connor on 2 April 2009. The results included the following statistics:

- 141 providers and 48 subcontractors;
- 72 per cent of Job Services Australia contractors are existing employment service providers and they will deliver 93 per cent of services;
- 74 organisations will deliver specialist services to help job seekers with special needs, including young people, the homeless, those with a mental illness and people from a non-English speaking background;
- 27 Indigenous organisations will deliver employment services;
- there are 88 not-for-profit contracts and 28 private sector contracts and the employment services share between not-for-profit and private sector providers will be similar to the current system;
- the two new overseas entrants will deliver less than two per cent of employment services.¹¹

4.21 The committee majority notes that what has not been announced and what has proved difficult to obtain from DEEWR is the market share between the providers which has diminished the capacity of the committee to be able to fully examine the outcomes.

10 *Senate Hansard*, 18 June 2009, p. 7.

11 The Hon Brendan O'Connor MP, Media Release, '\$4 billion new employment services – Job Services Australia', 1 April 2009.

Communication of results

4.22 Despite the use of the communication protocol, which was available in the Request for Tender document and signed off by the probity adviser, submissions raised concerns about communication of results by the department. The delivery of the tender announcement was criticised when technical problems with the DEEWR website meant that the results were delayed and tenderers were unable to find out if they had been successful.

4.23 Unfortunately on the day the successful tenderers were to be posted on the DEEWR website, technical difficulties meant the list did not remain available after it had been initially posted. It was then not available until around 6pm when a new temporary website had been built to overcome the difficulties. In addition, the department had realised that email had slowed so it began calling organisations to advise them of the results. This unfortunate timing of these technical difficulties caused confusion and unnecessary anxiety for providers and their staff.¹² The Secretary of the Department apologised for these difficulties on several occasions and encouraged unsuccessful tenderers to seek a debriefing on the process.¹³

4.24 MercyCare described the communication with DEEWR as 'deplorable' as it resulted in disruption, cost and unnecessary upset to the staff of their organisation.¹⁴ Even worse was MercyCare's explanation that they received notification of the results from a source other than the department. MercyCare also expressed its disappointment with the debriefing session on 5 May 2009 as it appeared none of the officials there had read the tender and were relying on advice from others. These officials seemed unable to identify the crucial weaknesses in the tender documents which led to loss of contracts. Given the cost of preparing the tender, MercyCare believed its debriefing was inadequate and the organisation was left with a belief that there was a lack of understanding of their proposal. In summary MercyCare noted:

This process was ineffectual and failed to meet the standard of care that should be expected of a large public body such as DEEWR.¹⁵

4.25 Mr Barry Sheehan told the committee that on the day of the announcement he sent his staff home at 4pm and then found out they had been unsuccessful when he looked at the internet around 5.30pm. He added:

I think the process is almost unconscionable, in terms of an agency with some staff that had been there for a decade, finding out over the internet that they had no jobs.¹⁶

12 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, pp. 34-35.

13 Nicola Berkovic, 'Coalition calls for job tender inquiry', *The Australian*, 7 April 2009, p. 4; Alexander Symonds, 'Job firms can ask why', *AFR*, 7 April 2009, p. 7.

14 MercyCare, *Submission 8*, p. 7.

15 MercyCare, *Submission 8*, p. 8.

4.26 Try Youth and Community Services reported that the communication by DEEWR was disgraceful as the organisation found the outcome of their tender submission on the website and they have received no further communication.¹⁷

4.27 NESAs also found the communication processes to inform successful and unsuccessful tenderers unsatisfactory. It advised the committee that the industry recommended 'in confidence' notification to tenderers to enable them to develop appropriate strategies for their organisation, particularly to brief staff. They wished to avoid staff being informed about tender outcomes and their job security through public announcements. In particular large organisations drew attention to logistical issues involved in arranging for all staff to be briefed simultaneously.¹⁸

4.28 Mr Peter Davidson, ACOSS, summarised the communication issues drawn to their attention:

The two problems that have generally been raised with us were the two-step announcement, which meant that after the first announcement there were rumours flying through the sector about whether people were going to keep their jobs or not. It was very unsettling for people. There were delays in the second announcement, which also caused a great deal of angst, especially amongst employees, and meant that providers were not able, in some cases, to properly inform their employees of the results before the employees found out directly.¹⁹

4.29 Despite the debriefing process, evidence indicated little satisfaction with this process. Mr Sheehan took the committee through his experience:

The feedback process, again, had the feeling of disrespect. I had the feeling that our tender was not read by the panellists that gave us the feedback. They mentioned a couple of things in the feedback. One, 'Your tender would have been strengthened if you had provided evidence of MOUs with employers.' I was thinking that was not part of the tender process but, apart from that, 10 years of history with employers in the local community. Are they telling me that newcomers, because they may have had MOUs, have demonstrated better linkages with the employer groups? I am really struggling with that?²⁰

4.30 Ms Karen McLaughlan, Business Manager, WAYS, outlined her experience:

It was like sitting in a meeting with somebody talking about an organisation that you had no knowledge of. It certainly did not feel or sound like they were talking about WAYS Action for Youth Services. It was of limited

16 Mr Barry Sheehan, *Committee Hansard*, 11 June 2009, p. 5.

17 Try Youth and Community Services, *Submission 23*, p. 3.

18 NESAs, *Submission 13*, p. 9.

19 Mr Peter Davidson, *Committee Hansard*, 11 June 2009, p. 33.

20 Mr Barry Sheehan, *Committee Hansard*, 11 June 2009, p. 5.

value. If I was to be unkind, I would say it was an insult to the amount of time that any organisation has had to commit to putting in a tender of that size.²¹

4.31 Job Futures told the committee that it seemed the main criterion was how convincing the arguments were rather than whether there was any substance behind them. In addition:

Some of the feedback that we received revealed a check list of things that should have been said by providers – regardless of whether the organisation could demonstrate that the existing strategies it had in place were delivering the goods.²²

4.32 Ms Wilma Gallet noted that some agencies she had contact with found the feedback to be better than in the past but many were disappointed that the feedback could not be provided in writing and that not all their concerns were addressed.²³

4.33 NESA told the committee about the feedback they had received on the debriefing sessions:

When we talk about the feedback processes and what some organisations have taken out from that process and what they have been able to glean as a consequence of that it is probably fair to say there are some people who have not, for a variety of reasons, felt that to be as satisfactory an experience and would certainly see themselves as not having achieved a satisfactory response and consequently a satisfactory outcome.²⁴

Committee view

4.34 The committee majority acknowledges the work undertaken by DEEWR to address the technical problems with their website, that the department apologised for the occurrence and undertook 'work-arounds' to contact tenderers.

4.35 It notes the dismay about the communication process by the unsuccessful tenderers and encourages the government to build into the future design safeguards to ensure that unsuccessful tenderers are advised promptly and sensitively and given appropriate time to arrange briefings for staff.

4.36 While acknowledging that the committee heard evidence that many providers found the debriefing session to be valuable, the committee majority encourages DEEWR to look at ways of making such session more helpful to the unsuccessful providers in future processes.

21 Ms Karen McLaughlan, *Committee Hansard*, 11 June 2009, p. 27.

22 Job Futures, *Submission 2*, p. 4.

23 Ms Wilma Gallet, *Submission 21*, pp. 6-7.

24 Ms Sally Sinclair, *Committee Hansard*, 11 June 2009, p. 56.

Recommendation 2

4.37 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.

Transition

Effect on job seekers

4.38 The tender process was criticised for causing disruption and upheaval for job seekers who will have to start from scratch with a new provider. The media reported that 38 percent of job seekers will have to move to a new provider from 1 July 2009 and another nine percent over the next year, making the number to change providers about 320,000.²⁵

4.39 Disruption was certainly an issue during the transition period for previous tenders. In the review of the Implementation of ESC3, using the level of complaints received from job seekers over the transition period, the ANAO identified a substantial increase during the transition period in 2003. Another indicator of disruption reviewed by the ANAO was the number of placements made during the transition period which showed a downturn during the transition period in 2003. In addition a survey of provider CEOs undertaken by the ANAO expressed the view that the DEWR objective for minimal disruption to job seekers was either not met or only partially met.²⁶

4.40 DEEWR advised the committee of the concern to minimise disruption for job seekers during this transition period and to this end, a number of initiatives to improve contact with job seekers to advise them of the changes have been undertaken. However, the committee heard of some difficulties on the ground particularly where new providers were not yet open. In these cases, it has been left to the current provider, often with reduced numbers of staff, to respond to job seeker concerns. The committee majority notes that it is important that job seekers experience as little disruption as possible during the transition period. The committee majority notes with concern the following information provided by Mr Reid of MercyCare:

The transition process looks neat on paper, but it is chaotic on the ground. In its best form the transition process has people being sent letters saying they have been allocated to new providers, but some of those providers do not even have premises yet. There is no way to contact them. All this issue goes on at the ground. I would say our staff, who will no longer have jobs

25 Patricia Karvelas, 'Job agencies banned from transferring paper records' *The Australian*, 28 April 2009, p. 4.

26 ANAO, Audit Report No. 6 2005-06, Implementation of Job Network Employment Services Contract 3, pp. 104-108.

in three weeks, are still using their integrity to try to help people through that system today.²⁷

4.41 An example of the anxiety caused by disruption was provided by Mr Reid who told the committee:

We had an individual who, in such anxiety over the process, overdosed two weeks ago because they are going to have to re-establish relationships. It is our staff that are still dealing with that issue and helping them through, even though they will not be the people helping them post 30 June. This is some of the human impact about this transition process on the ground.²⁸

4.42 Ms Karen McLaughlan, WAYS, told the committee of the transition from WAYS to the new service providers:

We have reviewed our current caseloads and we have identified about 300 young people who we think are particularly at risk of falling through the cracks. Of that 300 there are another 120 who are extremely at risk. Within the Bondi Junction area, because the new offices are due to open on the 1 July, which is three days after our closure, we are not sure what is going to happen. At this point we are doing our best to manage their fear and anxiety.

I would just like to note that both of our offices at Maroubra and Bondi Junction have noticed an upsurge in acting out behaviour. Young people who often do not understand why they might be feeling frightened, concerned or upset tend to act out. We have had an increasing number of incidents with these young people and obviously part of it is about the grief of having worked with this person for a number of years to having to go to work with someone who is new...²⁹

4.43 Ms Tracy Adams, CEO Boystown, told the committee of her experience regarding the transition:

As it has already been stated, often in our case they are young people who have significant barriers so they form a case management relationship. There was an anxiety with that cohort as to what would be happening and how that process would be going. Our staff have been working with those people as best we possibly can, because they have the relationship with them, to ensure that the transition for our clients is as smooth as possible and that the transition happens in such a way that they are not impacted by having to potentially go to another provider.

It is also very important to understand that often young people in streams 3 or 4 have numeracy and literacy barriers and that the communication that they receive from the department does need to take that into account. Certainly, our staff are currently ensuring, where possible, that the young

27 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 15.

28 *Ibid.*, p. 16.

29 Ms Karen McLaughlan, *Committee Hansard*, 11 June 2009, p. 25.

people that are still coming to us bring their communication with them so that it can be explained and talked through. Often, as we would know, they do not read past the first paragraph. It is to try to get the message as succinctly as possible to people who are being impacted. We are aware that the communication is certainly happening to clients.³⁰

4.44 Mr David Thompson, CEO Jobs Australia, explained the disruption in the industry when the model is changed:

There was further major disruption in 2003 when we moved to a completely different model. You can see graphs where they track the performance of the system and it goes down months before the tenders are actually due, as everyone focuses on that, and it takes month after the transition for the performance of the system to come up again. In a recent meeting providers—and I am talking about some of the large for profit and not-for-profit—were saying, ‘It will take us six months to bed this down.’ We are talking about a process that started well before the end of last year that will be starting to bed down properly at the end of this year.

In measuring the transaction costs one has to give consideration to what the dips in performance are. That is why my contention is that there has to be a smarter process that does not let that happen. I think first and foremost about Australia’s jobseekers, then the taxpayers, and they are all missing out in that process.³¹

4.45 The committee majority notes the lesson from previous tender processes that job seekers must experience as little disruption as possible during the transition period. While noting the actions taken to inform job seekers of the changes such as sending letters, it understands that many clients are not used to reading such notices because of poor literacy. DEEWR should understand this. Work done by the ANAO has shown a downturn in the performance of the system during the transition period.

Recommendation 3

4.46 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.

Recommendation 4

4.47 The committee majority recommends the ANAO review the performance of the system during this transition period.

30 Ms Tracy Adams, *Committee Hansard*, 11 June 2009, p. 49.

31 Mr David Thompson, *Committee Hansard*, 11 June 2009, p. 73.

Job losses

4.48 The media has reported jobs³² will be lost as a result of the tender outcomes and the government was criticised for contributing to unemployment at a time when unemployment is set to rise.

4.49 The Australian Services Union expressed concern for the staff of unsuccessful tenderers suggesting that they should be given preference of employment with new providers and that they should not lose continuity of service or entitlements if a new provider takes over their old employer's business.³³

4.50 MercyCare noted that in the short term the organisation will need to make around 50 people redundant and close two offices.³⁴ Mr Reid told the committee that some of these staff are going to new providers but some are leaving the industry altogether.³⁵ Around half his staff have been taken on by new providers but a fair proportion have not yet been taken up by other providers or have chosen not to continue in the sector.³⁶

4.51 Mr Frank Quinlan, Executive Director, CSSA, told the committee that from the organisations they represent, between 200 and 300 people will lose their jobs. He explained why it was difficult to provide exact numbers:

It really is difficult to project because it will be different in different locations. Frankly, it brings frustrations both ways. As Mr Reid said, there is a number of good staff that have taken a decision to just leave the industry because they are so fraught with the uncertainty. In some other locations you have a staff of 14 or so. I can think of one case where the manager and 12 of the staff have been taken on by a new provider, essentially for all of the tiers. They will change their uniforms on the evening of 30 June and start up on 1 July in the same premises. It is very difficult to understand that all of this tender process has really been worthwhile. It is hard to imagine that the service is going to look very different.³⁷

4.52 Mr Joseph Ryan, WAYS, told the committee:

...11 of our staff have been made redundant as part of the wash-up of the tender process. Only one has been offered a job with a new job service

32 Figures of job losses reported in the media vary wildly with numbers between 1000-5000.

33 ASU, *Submission 10*, p. 2.

34 MercyCare, *Submission 8*, p. 7; Mr Ashley Reid, *Committee Hansard*, 11 June 2009, pp. 11-12.

35 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, pp. 11-12.

36 *Ibid.*, p. 17.

37 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 17.

provider. Currently we anticipate we will lose somewhere between 20 and 30 of our full-time staff and loss of expertise is a tragedy.³⁸

4.53 Mr Russell King, CEO WAYS, added that of the 20 staff, 11 have been made redundant and already left. Of those, one person has taken up work with another provider. Of the remaining 10, one person has a job outside of the industry. None of the remaining nine have work. He also added that the three new providers in the area are fully staffed.³⁹ Despite talk about a strong demand for employment services skills, some displaced providers were sceptical of this, believing that incoming providers will bring in their own staff.⁴⁰

Committee view

4.54 The committee majority notes with concern the potential job losses in the sector. It hopes such employees will be employed by successful tenderers but highlights the amount of dislocation this process has caused for staff as well as job seekers. It also notes the advice from witnesses that some staff feel so discouraged as to leave the sector altogether. This departure will be a major loss of skills and experience for the sector that will take years to replace.

Licensing of operations: an alternative to tendering

4.55 One of the main concerns raised during the inquiry was whether a competitive tender is the best process to deliver employment services in what is now a mature sector. It notes well-informed comment about 'counterintuitive outcomes'⁴¹ of the tender process and the significant disruption it causes not only for providers and their staff but more particularly for job seekers.

4.56 The appropriateness of the purchaser-provider model was called into question by some witnesses. Catholic Social Services Australia submitted that:

- the tendering process is extremely costly both to government and providers, many of the latter each investing hundreds of thousands of dollars to prepare tender submissions;
- unsuccessful former providers face massive bills in retrenching staff, paying out property leases and selling off furniture and equipment; and
- new providers face substantial start-up costs in recruiting staff, finding and leasing premises and purchasing furniture and equipment.⁴²

38 Mr Joseph Ryan, *Committee Hansard*, 11 June 2009, p. 20.

39 Mr Russell King, *Committee Hansard*, 11 June 2009, p. 28.

40 Alexander Symonds, 'Job Services may put 1000 out of work' *AFR*, 3 April 2009, p. 5.

41 NESAs, *Submission 13*, p. 5.

42 Catholic Social Services Australia, *Submission 17*, p. 10.

4.57 The terms of reference asked the committee to look at the recommendations of the Independent Review of the Job Network undertaken by the Productivity Commission in 2002. However, there was very little evidence provided to the committee on this point. DEEWR focussed on the recommendation dealing with the purchaser-provider model (as described in chapter two) which found this model to be a suitable framework for Job Network and recommended its retention. However, it also recommended that:

...after Employment Services Contract 3, competitive tendering in the Job Network be replaced by a licensing system that:

- (a) ultimately permits free entry at any time to any supplier that meets DEWR's accreditation standards; and
- (b) includes automatic licence renewal, subject to a requirement that providers achieve a certain performance standard.⁴³

4.58 The committee majority acknowledges that the then Coalition government noted the recommendation and in 2002 implemented an 'Active Participation Model' that would operate under a licensing approach. It concluded that whatever model for employment services was adopted in the future must involve a purchasing process that is transparent and rewards good performers.⁴⁴

4.59 DEEWR addressed this issue for the current tender, and emphasised that licensing systems typically mean that an organisation meets a minimum licence requirement to enter the market compared to competitive tendering where the best organisations are selected to assist job seekers. DEEWR added that licences have not been supported as it is not clear that such a system 'would underpin the quality of services or offer net benefits to job seekers, employers or the market'.... DEEWR emphasised that support for a licensing system was not evident during the consultations with stakeholders.⁴⁵

4.60 Adoption of a licensing system does not necessitate a lowest-common-denominator approach based on simply identifying minimum licensing conditions, but can involve an ongoing process of quality assurance and improvement. The claim by DEEWR that support for a licensing system was not evident during consultations is disingenuous, to the extent that the issue was not included in the consultation framework and unlikely to come up because of the manner in which they were conducted.

43 Productivity Commission, Independent Review of the Job Network, Inquiry report No. 21, Canberra, 3 June 2002, p. XLVII.

44 Government response to the Productivity Commission response available at: <http://parlsec.treasurer.gov.au/DisplayDocs.aspx?pageID=&doc=publications/2002/JobNetwork.htm&min=igc> accessed 26 May 2009.

45 DEEWR, *Submission 12*, p. 17.

4.61 The model proposed by Mr Quinlan from CSSA, for example, is one that combines a surety of a core percentage of ongoing business for organisations that meet a benchmark standard, plus competition for an additional percentage of business. This would give service providers a clear signal about their performance and would ultimately lead to the growth of successful organisations and the shrinking of under-performing ones.

Committee view

4.62 While noting the department's response, the committee majority is mindful of the claims of 'counterintuitive outcomes' in submissions and concerns that the competitive tendering process is not able to adequately assess some aspects of provider performance. The government should re-examine this alternative. The committee majority looks forward to the release of new research being carried out by the Productivity Commission into improving the measurement of the not-for-profit sector's contributions. This may propose a solution to the problem of how to maintain efficiency and competitiveness in the employment services market while preserving the valued role of institutions which contribute so well to the nation's stock of social capital.

Conclusion

4.63 Doubts linger in the minds of the committee majority concerning the probity of this tender process. Although the committee received assurances that all steps taken were subject to probity audit, much of the information sought by the committee and other members of parliament to verify this was not made available.

4.64 A tender process worth \$4.9 billion demands the highest standards of transparency and accountability in its execution. It is fitting and appropriate that the Government demonstrates conclusively that every propriety has been observed, that the bids of all tenderers were treated fairly and that there was no political intervention at any stage of the process. The committee majority, in the absence of clear answers to some questions, cannot at this time be satisfied of this.

Recommendation 4

4.65 The committee majority recommends that:

- **the Government promptly provides answers to those questions taken on notice during in 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.**

4.66 The displacement of so many experienced operators with good records of achievement which have been detailed to the committee raise questions about the efficacy of the tender process. Evidence points to a need to improve the process,

particularly in such a mature industry, to keep disruption, dislocation and instability to a minimum while focussing on outcomes, competition and choice.

4.67 The committee majority recognises the need for competition in gaining business share and to have mechanisms to allow new providers into the market. However, it believes there is a need to modify the process for the future for a number of reasons. The outcomes have and will cause a significant amount of disruption which contributes to high staff turnover, destabilisation of the workforce and loss of expertise at such a critical time with unemployment rising. The disruption also affects job seekers during this period of transition, particularly those who are disadvantaged.

4.68 The committee majority proposes the following requirements be considered for future processes. The system requires effective dialogue with tenderers rather than what appears to be an over-reliance on written tender documents. From evidence provided to the committee, there would appear to have been limited verification of claims. When asked about this, DEEWR explained that they had many internal resources at their disposal to check claims. However, not one witness at the hearing could tell the committee that their referees had been contacted and they had received no contact from DEEWR. The committee majority believes that as with a job application, the written application is just one aspect of the process and the claims must be verified with referees. It considers the process would benefit from more tangible demonstration of the ideas and capabilities of tenderers.

4.69 A three year contract, even with the provision to extend was seen as too short by some in the industry. The new model will take at least six months to bed down and in the last year of the contract resources must again be turned towards ensuring the service continues. Such discontinuity is disruptive and costly, and a distraction from the main task of the provider. Consideration should be given to extending the minimum period of the contract to five years.

4.70 As the market is now mature, the process should recognise and work with the expertise that providers have built up over the past 11 years. The committee majority accepts that there was wide consultation with industry, particularly on the weighting to be given to past performance. However, the committee majority notes that past performance is an indicator of future performance and the outcomes of the old and new systems are both to place people into employment. A significant sector of the industry accepts that in hindsight the 30 percent weighting on past performance was inadequate and this should be taken into consideration in the future.

4.71 The committee majority notes that the loss of established, experienced and high performing providers and their staff weakens the sector. It believes it is important for the sector to be able to retain this experience. This supports the finding that the 30 per cent weighting given to past performance was inadequate and experience should be scored more highly. It would also be valuable to examine ways to measure the effect of loss of experienced staff on the organisations and on the job placement process.

4.72 The committee majority notes what appears to be a closing up of the market as evidenced by the reduction in the numbers of successful organisations. The tender process seems to favour larger organisations which have more resources at their disposal and capacity to inject capital and take on the administrative requirements. The significant cost involved in tendering risks disadvantaging smaller organisations with less capital and resources to devote to the tender process. Catholic Services Australia told the committee that producing tenders alone costs their agencies hundreds of thousands of dollars.⁴⁶

4.73 The committee majority acknowledges advice that the number of specialist providers has increased from the current Job Network. However, it notes the evidence that many smaller organisations felt unable to compete in the process and did not tender. The committee majority sees a need to ensure the diversity of the sector is maintained and enhanced. The tendering process should therefore not advantage the larger and well resourced organisations at the expense of other valued players. It cautions that for future processes smaller and specialist organisations must receive more support to ensure they don't feel excluded from the process.

4.74 Importantly, the committee majority believes the process has become too rigid and perhaps inadvertently fails to recognise the value of the additional community services provided by not-for-profit organisations. Future criteria should recognise this.

4.75 This inquiry has touched on a matter which, however difficult, should be properly addressed: the broader question of the extent to which government and not-for-profit agencies can legitimately and effectively form partnerships in pursuit of building and maintaining the social infrastructure. There is a need for clear policy statements on the way that governments fund community services generally. There needs to be a selection process that can identify the best quality providers, able to achieve a balance between probity and effectiveness, and without compromising either the interests of taxpayers or the philosophies which underpin the provision of care. There were no shortage of suggestions provided by witnesses which included:

- stronger emphasis on previous performance in service delivery;
- capturing additional community benefits in the weighting for local strategies;
- less reliance on written tender documents in the final selection process with more emphasis on demonstration of capabilities and experience, with referees included in this process;
- ensuring the diversity of the sector is maintained through processes that do not unfairly advantage larger, well resourced organisations;

46 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 2.

- serious investigation of the feasibility of substituting either in part or entirely, licensing arrangements instead of a tender process;
- examination of an accreditation framework; and
- oversight from an independent regulator to manage the market.

4.76 The committee majority understands that with most of these suggestions there may be concerns regarding a trade-off of probity for greater effectiveness. However, the committee majority believes it is time to review the tender process to investigate how best to address the issues raised with the committee and emphasises that ultimately it has done the sector and the community no good to have a supposedly pristine way of producing less than desirable outcomes.

Recommendation 5

4.77 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.**

Recommendation 6

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

Senator Gary Humphries

Chair