

Government Senators' Report

Government senators have seen benefit in this inquiry to verify the probity of the competitive tender process run by the Department of Education, Employment and Workplace Relations (DEEWR) which ensured a level playing field for all tenderers for employment services contracts. The committee uncovered no evidence to suggest the tender process was conducted in other than a fair, transparent, ethical and equitable manner and believes that due process was followed. Senators are aware that like any competitive tender process, it has resulted in disappointment for some tenderers. They note the provisions that have been made for the first time to assist these organisations through the transition from the market, and to re-orient their business and identify new activities and income streams. This report will explain the tender process and address the key issues raised with the committee.

Background to the new employment services

In early 2008, the government commenced a review of employment services to address deficiencies identified in Job Network. The system was criticised as being a 'one-size-fits-all, time-based approach' where job seekers are part of a production line which takes no account of their individual needs.¹ It was also described as out of date, fragmented, complex and bogged down in red tape.²

Extensive consultation

The Minister for Employment Participation, the Hon Brendan O'Connor MP, sought the views of employment service providers as well as other stakeholders and 260 submissions were received. The key aspects listed for improvement were:

- the need to reduce the number of separate programs;
- that the current approach was inflexible and did not take into account the needs of individual job seekers;
- the need for more intensive services and pre-vocational assistance for highly disadvantaged job seekers;
- the increasing burden of red tape and administration which was diverting attention away from assisting job seekers;
- that service fees should reflect the costs of the servicing, with outcome fees emphasising the achievement of sustainable employment;
- the system was seen not to be servicing employers well;

1 Minister for Employment Participation, Hon Brendan O'Connor MP, Speech to the National Employment Services Association National Conference, 15 August 2008.

2 Minister for Employment Participation, Hon Brendan O'Connor MP, PM Transcript, 'Government unveils new employment services system', 1 April 2009. Note: The objective of reduced administration is mentioned in the RFT on p. 5.

- that there was a need for greater links between employment services and training opportunities;
- that training and education were not adequately rewarded as outcomes;
- the harshness of the compliance regime; and
- dissatisfaction with star ratings for provider performance.³

Discussion paper

In May 2008, the Minister released a discussion paper, *The Future of Employment Services in Australia* where it was proposed to replace several programs (Job Network, Personal Support Program (PSP), Job Placement, Employment and Training program (JPET), Work for the Dole and Green Corps). The service would be streamlined and job seekers would be assisted in one of four streams of service based on their assessed need. The new model would include a \$41 million innovation fund to address barriers to employment of highly disadvantaged job seekers. Harvest Labour Services and self employment assistance were included.⁴

The discussion paper addressed a number of the concerns raised including:

- the establishment of a new streamlined model;
- more incentive for providers to focus on employer needs;
- improving access between employment services, the Productivity Places Program and the broader training sector;
- introduction of the new 'work like' compliance framework;
- a review of the performance system; and
- reducing the administrative burden.⁵

In relation to the deficiencies identified during the consultation process, National Employment Services Association (NESA) emphasised:

There was a clear view by the majority of NESA's members that current arrangements, particularly the Job Network, no longer offered the most appropriate framework for the delivery of employment services in Australia. This view had been offered in various representations and papers submitted to government by NESA over recent years...

Through this process there were substantial opportunities provided for interested parties to participate and offer submissions for consideration. We consider that many of the perspectives and the suggestions offered are reflected in the design of services offered as part of Job Services Australia.⁶

3 DEEWR, *Submission 12*, pp. 6-7.

4 DEEWR, *Submission 12*, p. 7.

5 DEEWR, *Submission 12*, p. 8.

6 Ms Sally Sinclair, NESA, *Committee Hansard*, 11 June 2009, p. 53.

190 submissions were received on the discussion paper resulting in a number of refinements to the model.

Request for tender (RFT) exposure draft

The *Exposure Draft of the Purchasing Arrangements for the new Employment Services 2009-12* was released on 1 August 2008 and consultations were held around Australia with comments closing on 29 August 2008. 76 submissions were received.⁷

Release of RFT

After consultation with providers and other stakeholders, and changes to the RFT resulting from feedback on the exposure draft, on 27 September 2008, the government released a \$3.9 billion request for tender to deliver reformed employment services from 1 July 2009 to be known as *Job Services Australia: People, Skills and Jobs*. The tender closed on 14 November 2008.

Submissions recognised the amount of consultation with the industry and the subsequent refinements as a result of feedback received. Specifically NESAs noted:

The employment service model for Job Services Australia has in the view of many addressed major concerns in the design of the current employment service framework. The service model supports a range of interventions including a focus on skills, vocational and non vocational support to assist job seekers. There is greater access to services and resources to support those most disadvantaged.⁸

Comment

Government senators note that the new employment services were designed in consultation with employers, job seekers, employment service providers and other stakeholders. The extensive consultation and the changes made as a result of it were acknowledged in submissions. Government senators note that NESAs told the committee that an audit on the outcomes found that more than 80 per cent of the issues identified with Job Network had been addressed by the new employment services model.⁹

Overview of the new system

Changes have been welcomed by the industry. The Australian Council of Social Service (ACOSS), for example, told the committee:

7 DEEWR, *Submission 12*, pp. 8-9.

8 NESAs, *Submission 13*, p. 12.

9 Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 57; NESAs, *Submission 13*, p. 12.

We welcome the establishment of Job Services Australia. The new system is more flexible, needs oriented and less compliance oriented than the Job Network.¹⁰

Key features of the new system include:

- more resources for the most disadvantaged job seekers;
- development of an Employment Pathway Plan which details the services tailored to a job seeker;
- an Employment Pathway Fund to allow employment service providers to purchase goods and services for a job seeker to address their barriers to employment;¹¹
- a stronger focus on ensuring work experience will provide the skills and experience required to gain continuing employment;
- strengthening the New Enterprise Incentive Scheme with up to 18,900 small business training places being made available under the Productivity Places Program; and
- a \$41 million Innovation Fund for projects that address barriers to employment for groups of highly disadvantaged job seekers.

It will consist of:

Stream services, including specialist services

Job seekers will be placed into one of four streams by Centrelink using the Job Seeker Classification Instrument (JSCI) and, where needed, a Job Capacity Assessment (JCA).

New Enterprise Incentive Scheme (NEIS)

A panel will provide a range of services to assist eligible unemployed people to establish and run a small business.¹²

The Innovation Fund Panel

The Innovation Fund will fund projects proposed by providers to overcome barriers to employment for disadvantaged job seekers.¹³

10 Mr Peter Davidson, Australian Council of Social Services, *Committee Hansard*, 11 June 2009, p. 31.

11 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 23.

12 DEEWR, *Submission 12*, p. 11.

13 *Ibid.*

Employer Broker Panel

Employer Brokers will ensure that Employment Services have a strong focus on matching the needs of job seekers with the labour requirements of employers. They will also coordinate and target the efforts of Employment Services providers to better match the labour needs of employers with appropriate job seekers. To receive funding for the activities, organisations must be a member of the Employer Broker Panel. Selection of panel members was conducted through the Request for Tender for Employment Services 2009-12 process.¹⁴

Harvest labour Services

This will be available to primary producers in regions where there is a demonstrated need that out-of area harvest workers are required.

National Harvest Labour Information Service

This service will coordinate and distribute harvest labour information to interested participants.¹⁵

Model to suit the economic conditions

Some questions were raised in submissions regarding the ability of the new model to work effectively in a changed economic environment with rising unemployment. Critics pointed to the fact that the RFT was written when economic conditions, particularly the unemployment rate, were more favourable.

This issue has been addressed by the then Minister for Employment Participation who stated that Job Services Australia will 'deliver a better, more personalised service that responds to all economic conditions'.¹⁶ There will be stronger links to the Productivity Places Program which provides training places for job seekers and recently retrenched workers. The Minister for Employment Participation also noted that:

During these difficult economic times it is critical that job seekers remain connected to the labour market and access training so we enhance the nation's skills base for when our economy recovers.¹⁷

14 Information available from:
<http://www.deewr.gov.au/Employment/JSA/Pages/EmployerBrokers.aspx#program> accessed 5 June 2009.

15 DEEWR, *Submission 12*, p. 12.

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

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

Services will be driven by demand

More specifically, flexibility is built into the system. Stream services, including specialist services will be demand driven and will be able to take into account fluctuating numbers of job seekers in response to all economic circumstances. As noted by DEEWR:

The model is sufficiently flexible to accommodate any movement in unemployment rates.¹⁸

The Brotherhood of St Laurence welcomed services being driven by demand, noting:

...the new JSA system as having greater potential to be significantly more effective and efficient as a demand driven model compared to its predecessor.¹⁹

The new model will replace the current time-based system where job seekers have to wait a certain length of time before accessing services. There is improved capacity to assist the most disadvantaged in times of economic downturn. The new system will provide an integrated service, a 'one stop shop' for job seekers to access training and employment services rather than moving in and out of programs.

Immediate assistance for workers who lose their job as a result of the global recession

The government has determined that those who have lost their job due to the effects of the global recession will be referred to stream two. This ensures they are able to gain immediate and personalised assistance such as career advice and training instead of having to wait at least three months as under the current system.²⁰

Caps on programs lifted

DEEWR also noted that some of the separate programs had restricted participation such as PSP, JPET and Green Corps due to caps or limited funding but now the caps will be removed to address the more serious non-vocational needs of highly disadvantaged job seekers.²¹

18 DEEWR, *Submission 12*, p. 12.

19 Brotherhood of St Laurence, *Submission 19*, p. 6.

20 Hon Julia Gillard, MP, Joint Media Release with Prime Minister Kevin Rudd and Hon Brendan O'Connor MP, 'Immediate Employment Services to Support Retrenched Workers', 24 February 2009.

21 DEEWR, *Submission 12*, p. 12.

The streamlining of services will also reduce the administrative burden on providers which will allow them to spend more time with job seekers. This objective, outlined in the RFT, will be achieved by reducing seven programs to one which also reduces seven schedules, outcomes and payment schedules to one. DEEWR added that not only has the administration been simplified and reduced:

...it has also been improved to make sure that there are the correct incentives for focusing most of the resources on the most highly disadvantaged, to give more emphasis on working with employers and to give more emphasis to the training and skills acquisition needed to get on that pathway to employment that is available in the local area.²²

Stronger focus on matching labour requirements

In addition, there will be an stronger focus on matching skills, people and jobs and Employment Brokers will ensure a focus on matching the needs of job seekers with the labour requirements of employers.²³

The strengths of the model were recognised in submissions. BoysTown noted:

...the employment services model is sustainable in a climate of low employment growth and rising unemployment. The employment services model focuses on developing the skills of the job seeker to suit the current market. Furthermore the employment services model also provides opportunity to work with employers to identify industry needs and to ensure that employment placement activities are consistent. The model provides funds for both activities. The other strength of the model is the employment pathways fund. At this time industries are restructuring to position themselves for any future surge in economic activity. This may well result in the need for new skills in the restructured labor market. The cost of retraining employment service clients to meet these new demands can be met through the employment pathways fund.²⁴

NESA also pointed out that the new model focuses on the provision of individually tailored services to meet the needs of job seekers. It advised that this individual focus 'ensures that the model is appropriate to different economic climates from a service perspective'.²⁵

In summary DEEWR noted:

22 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 24.

23 DEEWR, *Submission 12*, p. 13.

24 BoysTown, *Submission 11*, p. 9.

25 NESA, *Submission 13*, p. 12.

Job Services Australia is one part of the Government's response to the global recession, accompanying the PPP, training reforms and economic stimulus measures including the Building the Education Revolution and other significant infrastructure investment. Job Services Australia is therefore part of the economic strategy designed to meet Australia's future skills and workforce needs and ensure that economic recovery does not result in particular regions or groups being left behind.²⁶

Model for social inclusion

Government senators also note that the review of the Job Network and the design of the new system was part of the government's agenda for social inclusion and commitment to increasing the skills and productive capacity of the workforce.²⁷

Comment

Government senators emphasise that the \$4.9 billion being spent on Jobs Services Australia is all about placing people into employment. The new system addresses the deficiencies in Job Network identified by stakeholders during the consultation process, all of which still hold true in the current economic conditions. The new system will be demand driven which provides the system with flexibility and the four streams means assistance can be more individually tailored. The model has already proved its ability to respond to changing conditions and changes in the unemployment rate with the government's announcement that workers made redundant because of the global recession could access stream two which will ensure they have access to assistance from day one instead of having to wait under the current system.

The new model will provide assistance to job seekers when they need it unlike the current model which has waiting periods before job seekers can receive assistance. Additionally, the new system will be an integrated service and job seekers will be able to access a 'one stop shop'. Importantly, the service is integrated with the government's other stimulus and training packages with providers able to access the 711, 000 new training places through the productivity places program. These examples show the greater reach of the new system in these areas over the current model.

Purchaser-provider model for employment services

Questions have been raised regarding use of the purchaser-provider model by the government since the inception of Job Network in 1998. These questions continue to be raised by providers. Government senators note that there have been numerous reviews and evaluations of employment services over the years. In particular, government senators note the Independent Review of the Job Network undertaken by the Productivity Commission in 2002 which, among others, addresses this issue.

26 DEEWR, *Submission 12*, p. 15.

27 DEEWR, *Submission 12*, p. 13.

The Productivity Commission found the purchaser-provider model to be a suitable framework for Job Network and recommended its retention. In doing so, it pointed to the focus on outcomes, competition and job seeker choice. However, it noted that provision of services by external organisations can be achieved through many mechanisms – such as licensing, competitive tenders, vouchers and franchising²⁸ and 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.²⁹

The then Coalition government noted the recommendation, and while noting the cases for and against a licensing system, it concluded that any future purchasing process should be transparent and reward good performance. It would need to address issues including how to maintain a quality service over time, how to ensure the most disadvantaged job seekers receive the assistance they require and how to remove poor performers.³⁰

For this tender process, questions were also asked about whether other models of delivery had been considered. DEEWR said that they received advice from the independent probity adviser on the best process to use to purchase employment services from providers.³¹ DEEWR also responded that consultation did not show support for a licensing system as:

Licensing systems typically operate on the basis that any organisation that meets minimum licence requirements may enter the market and offer their services. This contrasts with an open but competitive tender process where the Department selects the best tenderers to be awarded contracts to deliver services. The main difference is that the tender and contracting system aims to select the best organisations to assist job seekers, compared to any organisation that meets a base minimum requirement. Licences have not been supported since the Commission's review as it is not apparent that such a system would underpin the quality of services or offer net benefits to job seekers, employers or the market.³²

28 Productivity Commission, Independent Review of the Job Network, Inquiry report No. 21, Canberra, 3 June 2002, p. 3.5.

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

30 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.

31 Ms Malisa Golightly, DEEWR, *Committee Hansard*, 11 June 2009, p. 83.

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

Views of the not-for-profit sector

The composition between not-for-profit and private sectors remains similar to the current system. However, it appears that there has been movement in this sector for a number of reasons. The Brotherhood of St Laurence pointed out that the new policy for employment services through purchasing arrangements and selection criteria was clearly articulated. Organisations needed to take this into account.³³ Evidence indicated that some organisations believed the new model did not align with their mission and values.³⁴

Professor Richard Mulgan provided an explanation of why not-for-profit organisations have been vocal which is supported by the evidence before the committee. In summary, not-for-profits are not run like businesses and feel they cannot compete on an even footing with the for profit providers. BJL Connecting Communities typified the response stating that 'the business of non profits is not business'.³⁵

Professor Mulgan explained that for organisations which view themselves in a partnership with government, a competitive tender process goes to the heart of this perceived partnership between government and the not-for-profits where all are meant to compete on a level playing field. This process moved the contracts away from the partnership model towards a more classic contract model and 'they have regarded the process as a betrayal of long standing relationships and a breach of trust'.³⁶ A competitive tender process run by DEEWR, which focuses only on employment outcomes, is not able to take into consideration the additional community value and services provided by many of these not-for-profit organisations.

Much of the dismay experienced by not-for-profit organisations which lost contracts stems from the fact that they had engaged in extensive cross-subsidy of their entire operations through Job Network payments. In terms of their 'mission' this was entirely justified and valuable to the community, but it could not be given any particular recognition in terms of the RFT.

NESA noted the difficulties of attributing additional weighting to account for value for money factors which fall outside the delivery of contractual service requirements and performance measures.³⁷

However, Mr David Thompson, CEO Jobs Australia, explained that he did not see any systemic bias against not-for-profits in the system:

33 Brotherhood of St Laurence, *Submission 19*, p. 6.

34 See Joondalup Youth Support Services, *Submission 1*, p. 4; Ms Annette Gill, *Committee Hansard*, 11 June 2009, pp. 65- 66.

35 BJL Connecting Communities, *Submission 3*, p. 1.

36 Professor Richard Mulgan, *Submission 14*, pp. 1-3.

37 NESA, *Submission 13*, p. 4.

A significant number of the little guys in the non-profit sector have lost out as a consequence not of the tender but from failing to tender and of program consolidation. But there is a bunch of medium sized nonprofits that are actually growing considerably. I think some of the competition between nonprofits has generated some of these results inasmuch as competition between for profits and nonprofits. Again, I have no whiff at all of any sort of systemic bias against nonprofit organisations, in particular.³⁸

Although concerns were raised by some in the not-for-profit sector, not all religious organisations shared the same views. The committee notes the view of the Brotherhood of St Lawrence regarding the process:

An independent review of the new Jobs Services Australia tender would be a waste of resources at a time when the new service systems needed to be bedded down to ensure that they offered the best service possible to disadvantaged job seekers...

...the existing Job Network system and its array of complementary programs has been failing disadvantaged Australians for too long. Fragmentation into seven different programs left the Job Network inefficient and largely ineffective in helping disadvantaged job seekers.

Its star rating system provided perverse incentives that encouraged a situation where the needs of the most disadvantaged job seekers were largely ignored...These failings of the current system have been almost universally acknowledged by Job Network providers but especially so by the church-related providers...It's a little disingenuous for those same providers now to cite previous star rating performance in support of those providers who have been unsuccessful in the tender.

Those same providers have been supportive of the Government's decision to reduce the array of programs from seven to one in an effort to provide a much more integrated and efficient service for job seekers. In doing so, it was always going to be the case that there would be some consolidation and rationalisation in the range of providers of services. This should not have come as a surprise to anyone within this service sector...³⁹

In response to questions about taking into consideration the profit/not for profit status of a tenderer, DEEWR advised:

It would not have been permissible, in accordance with Commonwealth procurement law and policy, to base a value for money decision on the for-profit/not-for-profit status of the tendering entity, rather than making decisions based on the best manner on which any tendering entity could demonstrate how they could achieve the policy objectives of the RFT.⁴⁰

38 Mr David Thompson, *Committee Hansard*, 11 June 2009, pp. 76-77.

39 Anglican Media, 'Church split over new job services contracts', 8 April 2009.

40 DEEWR, *additional information*, 19 June 2009.

Comment

Government senators note that the proportion of profit and not-for-profit providers are virtually the same and many smaller community based organisations that expanded have become quite significant players. The government recognises the excellent community work undertaken by these organisations. How best to ensure the preservation of community capital and how best to capture this in a competitive tendering process is challenging and has been an inherent problem in the system since the first tender process. The discussion about 'counterintuitive outcomes' is not unique to this tender process and has been evident in past tender processes.⁴¹

The government has acknowledged the difficulty of recognising the contribution of the not-for-profit sector. On 17 March 2009, the Productivity Commission received terms of reference from the government asking it to undertake a commissioned study on the contributions of the not-for-profit sector. The study's focus is on improving the measurement of the sector's contributions and removing obstacles to maximising its contributions to society.

In undertaking the study, the Commission is to:

- assess current and alternative measures of the contribution of the not-for-profit sector and how these can be used to better shape government policy and programs so as to optimise the sectors contribution to society;
- identify unnecessary impediments to the efficient and effective operation of not-for-profit organisations and measures to enhance their operation;
- consider ways in which the delivery and outcomes from government funded services by not-for-profit organisations could be improved;
- examine recent changes in the relationships between government, business and community organisations and whether there is scope to enhance these relationships so as to improve outcomes delivered by the not-for-profit sector; and
- examine the impact of the taxation system on the ability of not-for-profit organisations to raise funds and the extent to which the tax treatment of the sector affects competitive neutrality...⁴²

NESA also recommended to government that an industry reference group be formed to look at alternative purchasing and incentive models for the future and this has been accepted.⁴³ The group will also investigate processes to capture more qualitative

41 Ms Sally Sinclair, NESA, *Committee Hansard*, 11 June 2009, p. 53 and p. 55.

42 Information available from: <http://www.pc.gov.au/projects/study/not-for-profit> accessed 12 June 2009.

43 NESA, *Submission 13*, pp. 13-14; Ms Sally Sinclair, NESA, *Committee Hansard*, 11 June 2009, p. 54; Ms Golightly, DEEWR, *Committee Hansard*, 11 June 2009, p. 84.

checks and balances.⁴⁴ Government senators note that in response to this request, on 7 May 2009, the government announced that it would form a reference group of employment service providers, the Australian Services Union and organisations representing job seekers, in order to receive feedback and to provide the government with advice about the conduct of future purchasing and related processes in the interest of continuous improvement.⁴⁵

Comment

Government senators welcome initiatives such as the study by the Productivity Commission into the contributions of the not-for-profit sector and the industry reference group on alternative purchasing and incentive models and encourages the findings to be taken into consideration for future arrangements.

The tender process

The requirement for a tender process

Questions were raised with the committee about the requirement for and timing of the tender process. Government senators note that current Employment Services Contract and Funding Deeds expire on 30 June 2009 and therefore the tender process could not be delayed. The new contract will commence on 1 July 2009 and end 30 June 2012 and have the ability to be extended for a period of up to six years.⁴⁶ DEEWR explained:

In the case of Job Network, the Commonwealth has no valid contractual capacity for further extension beyond 30 June for 95 per cent of current business. For other current programs such as the PSP and JPET, it would not be consistent with the introduction of the new integrated employment services model to extend these programs beyond 30 June 2009 in their present form as they were to operate differently and they had been subsumed into the new integrated model.⁴⁷

In addition, government senators note:

Given the procurement of services under the Employment Services Deed 2009-2012 is a new procurement, is not exempted under the CPGs [Commonwealth Procurement Guidelines] and has a value above \$80,000, it is a covered procurement. Except in limited circumstances that do not apply here, the CPGs mandate an approach to the open market for covered procurements. An open tender process was the most efficient and effective approach to the open market in these circumstances.⁴⁸

44 Ms Sally Sinclair, NESA, *Committee Hansard*, 11 June 2009, p. 55.

45 DEEWR, *Submission 12*, p. 29.

46 Request for Tender for Employment Services 2009-12, p. 3.

47 DEEWR, *Submission 12*, p. 19.

48 *Ibid.*

Apart from the legal requirement to renew tenders, there was a policy imperative. The significant changes in the employment services model to address the deficiencies identified with Job Network also required implementation.⁴⁹

The level of consultation and the need for a full tender process was acknowledged in evidence provided to the committee.

When the current Employment Services Contract (ESC3) was extended for a period of three years in 2006 there seemed to be a general consensus within the sector that a full tender would be required for services to be delivered beyond 30th June 2009. In May 2008 the Government released a discussion paper and held a range of public consultation sessions on the future of Employment Services in Australia. This was followed by the release of a draft request for tender, giving all potential participants the opportunity to review and comment on the future delivery of the service. When the final request for tender was released there were some relatively small changes and all parties interested in tendering were provided with the same information and access to the answers to any questions raised by potential tenderers. Therefore all tenders were submitted based on the same publicly available information.⁵⁰

NESA also told the committee that the requirement for a tender process was understood by the industry:

There was an understanding by the industry based on the advice that we had received, and given that there was a merging of seven programs into one, that it was difficult to consider any other way that the government could procure the service providers for the new model. There really did not seem to be avenues, as there might have been in contract extensions under one particular program in the past, that you could roll over parts of the program, because it is a completely new model.⁵¹

The issue of timing also raised suggestions that the contracts should have been rolled over for those performing well. Consultation made it clear that a new system was required, even if this entailed much work in submitting a new tender document.

Government senators note that while DEEWR has acknowledged that tenders are time consuming, expensive and potentially disruptive, there are advantages as detailed below.

Open tender rounds have the advantage of allowing new entrants into the market and preventing existing providers from becoming complacent because of an expectation of continuing business. They also enable the

49 MTC Work Solutions, *Submission 4*, p. 1.

50 MTC Work Solutions, *Submission 4*, p. 1.

51 Ms Sally Sinclair, NESA, *Committee Hansard*, 11 June 2009, p. 58.

purchaser to implement policy changes which may be necessary over time...⁵²

DEEWR advised the committee that the advice provided by the external probity adviser also went to different processes and which would represent best practice.⁵³

Comment

Apart from the expiration of the contracts and the inability to extend them, government senators note the significant change in focus of the new system and believe it was entirely appropriate for a competitive tender process to be held for providers to demonstrate their ability to deliver the new services.

DEEWR role

The competitive tender process was conducted by the Department of Education, Employment and Workplace Relations (DEEWR). The department noted that decisions at every level were made by the department at arms length from government.⁵⁴ Regarding the process, DEEWR noted:

The tender process has been conducted in a robust and thorough manner in order to obtain the best outcomes. Tenders were subject to an in-depth and rigorous assessment against the published selection criteria, by staff of the Department with relevant experience, expertise, and regional knowledge, in order to select the best providers to meet the needs of job seekers and local communities. It has been monitored by an external probity advisor to ensure full adherence to the selection process, fairness and transparency.⁵⁵

The expertise by DEEWR was acknowledged by Jobs Australia which said this was reflected in the quality of the tender documentation and in the design and implementation of the tender assessment process. It also advised the great majority of providers have similarly developed their skills and expertise in preparing their responses to request for tenders over the years.⁵⁶

Communication with DEEWR

Some submissions questioned the time taken for DEEWR to respond to questions via the hotline or email with some claims that questions did not receive a response.

52 DEWR Submission to the Productivity Commission Independent Review of Job Network, January 2002, p. 59.

53 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 84.

54 Information available from: http://www.workplace.gov.au/NR/rdonlyres/F1F6E72D-FE92-46CD-8704-6655479B6403/0/Job_Services_AustraliaThe_Tender_Process.pdf accessed 19 May 2009.

55 Information available from: <http://www.workplace.gov.au/workplace/Publications/Purchasing/EmploymentServices2009-12/> accessed 19 May 2009.

56 Jobs Australia, *Submission 16*, p. 2.

Government senators note advice from DEEWR that the average response time was 4.6 days with the time taken to answer questions depending on the complexity of the question. All questions were required to be probity cleared. DEEWR advised that it is not aware of any questions being unanswered. Duplicate questions and answers were not repeated, however, an email reply was always provided referring the person to the website for the answer to their question.⁵⁷

Independent probity advisor

The tender process was overseen by an independent external probity advisor 'to ensure full adherence to the selection process, fairness and transparency'.⁵⁸

The RFT noted that the role of the probity advisor was to:

Advise DEEWR on the probity and integrity of the purchasing process. The role includes developing an overarching probity plan that can be applied to the procurement and providing advice on probity issues, conducting appropriate probity training and advising on relevant security arrangements.⁵⁹

Further, DEEWR noted that the independent probity advisor:

- reviewed all documents published in connection with the tender processes;
- reviewed all actions taken by the department in the tender process which included the assessment of bids from tenderers, the selection of successful tenderers and the recommendations for business allocations; and
- attended all meetings where decisions were made and confirmed in writing that all decisions were made in accordance with probity requirements.⁶⁰

57 DEEWR, additional information, 22 June 2009.

58 Information available at: http://www.workplace.gov.au/NR/rdonlyres/CEA2DC1E-7128-47D7-BBB1-17F2E8CED65E/0/Debriefing_Schedule.pdf accessed 19 May 2009.

59 Request for Tender for Employment Services 2009-12, p. 61.

60 Information available from: http://www.workplace.gov.au/NR/rdonlyres/F1F6E72D-FE92-46CD-8704-6655479B6403/0/Job_Services_AustraliaThe_Tender_Process.pdf accessed 19 May 2009. See also *Estimates Hansard*, 1 June 2009, p. 33.

Evidence showed the witnesses believed the department had been scrupulous in its adherence to probity requirements in all aspects of the tender process and there is 'no evidence or suggestion of any impropriety or untoward bias in the tender assessment process'.⁶¹

Comment

Government senators note that Clayton Utz provided an unqualified sign off on the conduct of the tender process and it was praised as a benchmark for the conduct of Commonwealth procurement as DEEWR not only met but exceeded many probity principles and standards.⁶² Government senators emphasise that there was no evidence provided to the committee which questioned the probity of the tender process.

It should be noted here that questions were asked of DEEWR about allegations of ministerial interference or influence in the tender process. The department responded that the minister was briefed on the tender results just before his announcement of them on 1 April 2009. Up to that point, the tender process was conducted at arms length from government.

Assessment process and decision making

DEEWR advised that there were seven layers of checking the assessments and the probity adviser checked off each step to ensure objectivity, fairness and value for money.⁶³ Tender assessment was a complex process with 438 tenders received containing almost 3000 bids.⁶⁴ Australia was divided into 116 Employment Service Areas (ESAs). Organisations had to nominate the ESA they wished to compete for and were compared against others on an area by area basis.

Those who were successful were able to establish that they:

- had demonstrated past performance in helping job seekers;
- understood how the new employment services should be used to help job seekers obtain skills and jobs and employers to meet their labour needs;
- had in place sound local strategies to help job seekers and employers and had strong linkages with other organisations offering services in their community, like training, housing or community services; and

61 Jobs Australia, *Submission 16*, p. 2; Mr Barry Sheehan, *Committee Hansard*, 11 June 2009, p. 11; Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 53 and 59.

62 Clayton Utz, *Submission 9*, pp. 1-3.

63 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 30.

64 Job Services Australia – The Tender Process, available from: http://www.workplace.gov.au/NR/rdonlyres/F1F6E72D-FE92-46CD-8704-6655479B6403/0/Job_Services_AustraliaThe_Tender_Process.pdf accessed 12 May 2009.

- had sound governance arrangements.⁶⁵

3.2 The department also advised that it ensured the results would be in the interests of job seekers overall and would deliver value-for-money by making sure:

- job seekers will have a choice in provider;
- appropriate service coverage across Australia;
- providers are available to assist job seekers with special needs, like young people, the homeless, or people from a non-English speaking background;
- the interests of job seekers overall are considered; and there is a diverse mix of providers across the country.⁶⁶

Some submissions questioned the level of local knowledge of the assessors. DEEWR explained that there was an assessment team of two people with experience in employment services and knowledge about delivery on the ground. In addition, the assessment is checked by a senior contract manager and a state manager who has knowledge of the local area.⁶⁷

Use of tender documents

Government senators note the questions raised about the reliance on the written tender documents but submit that this was done for reasons of probity and equity. BoysTown, for example, advised the committee that they had no concerns regarding the tender design and the assessment process used.⁶⁸ Ms Tracy Adams, CEO, BoysTown, provided her view on the tender documents:

I felt that it was very clear what was expected from the tender. It was very well spelt out. It was very succinct. I think the challenge was to be able to answer the questions per se, rather than perhaps focus on what the organisation wanted to be able to say.⁶⁹

On the point of contacting tenderers to discuss claims, DEEWR advised:

In contacting the tenderer to talk about their claims we have to be extremely careful in terms of the probity of the process. Under the RFT we are allowed to clarify certain things, which we did from time to time, but

65 Information available from: http://www.workplace.gov.au/NR/rdonlyres/F1F6E72D-FE92-46CD-8704-6655479B6403/0/Job_Services_AustraliaThe_Tender_Process.pdf accessed 19 May 2009.

66 Information available from: http://www.workplace.gov.au/NR/rdonlyres/F1F6E72D-FE92-46CD-8704-6655479B6403/0/Job_Services_AustraliaThe_Tender_Process.pdf accessed 19 May 2009.

67 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 29.

68 BoysTown, *Submission 11*, p. 4.

69 Ms Tracy Adams, CEO BoysTown, *Committee Hansard*, 11 June 2009, p. 44.

talking to a tenderer about more information to add to their claims would be quite unfair, because you are giving one tenderer the ability to have a second go at the tender.⁷⁰

The issue here is that they all have the same opportunity to compete in a tender. It is a competitive process. We have to be very careful that we treat all the tenderers fairly and do not enter into procedures or practices that allow certain bits of information to be added by some tenderers and not the others.⁷¹

In response to suggestions to conduct an interview process for tenderers, DEEWR advised;

...in a large and complex tender assessment process such as that for Job Services Australia (where over 2,100 bids for Stream Services were received), there is little scope, as a practical matter, to include in the tender assessment and evaluation process an interview stage...⁷²

Probity considerations mean that an interview process would be required to be conducted with each tenderer which would have required hundreds of separate interviews and the development of strict guidelines to conduct them. In that respect, such a process would have the potential to create more uncertainty, not less, in determining the outcomes of the procurement.⁷³

DEEWR emphasised that the avenues used to verify claims were broad and were regarded as best practice as advised by the probity adviser.⁷⁴ In response to questions over the amount of checking done by DEEWR to verify claims, the department responded:

In terms of the assessment against that criteria, or any of the others, we actually take a very broad-ranging approach. We have, of course, a lot of data on people's performance, whether it be star ratings or anything else. We check with other areas of the department. Many of these organisations have other contracts with us, or indeed with other departments at Commonwealth level and state level. We check any of the sources that we can get data on. We verify the experience that we have had with people, including all of our assessors, who were people very familiar with our programs and, indeed, were experienced contract managers and account managers who work with organisations in the local area all of the time. There was quite a range of things. If referee reports were provided they were certainly taken into account. We used any number of things to verify claims that were made.⁷⁵

70 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 98.

71 Ibid.

72 DEEWR, additional information, 22 June 2009.

73 DEEWR, Additional information, 22 June 2009.

74 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 99.

75 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 96.

Regarding referee reports, DEEWR said that the RFT required organisations which had not previously delivered employment services to provide two referee reports and these were taken into account. In addition, any provider could provide any evidence that they wanted to substantiate their claims, including referee reports, letters of support or quantitative data. DEEWR added that many successful tenderers provided data about certain cohorts of job seekers, employers or characteristics of an ESA and why a particular strategy was more suited to that ESA and such data would have been checked.⁷⁶ Regarding specific claims that referee reports were not checked, DEEWR responded:

We took into account any information that we could get. If somebody was an existing provider we have all sorts of information about that provider, and as per the RFT we also reserve the right to contact people other than the referees, and we did.

The issue here is how we substantiated the claims. If we had evidence to hand or by contacting other departments, other levels of government or other ways of checking the data and information presented, then that was taken into account. If we needed to follow up any source, including referees, we did.⁷⁷

The issue here is that we should not rely on any one source. You need to make sure that you take into account the information that is available and what it is telling you about supporting or not supporting the claims.⁷⁸

What I am trying to say is that no one source is or was taken into account. If we had enough evidence either internally or externally that supported the claims that was fine; we had substantiated the claims. If there was evidence that was somehow contradictory, yes, we would follow up another line of information. I am trying to give you an idea of the comprehensiveness of the fact that we took into account all information. If we could substantiate the claims, we did. If there were some contention about whether something was substantiated or not, we would keep checking.⁷⁹

DEEWR also explained that tenderers were assessed on issues such as their strategies, implementation, experience, coverage, diversity of choice for job seekers and range of business. These considerations were unique for each ESA.⁸⁰

DEEWR has acknowledged that the standard of tenders was generally very high:⁸¹

76 Ms Golightly, *Committee Hansard*, 11 June 2009, pp. 96-97.

77 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 97.

78 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 98.

79 Ibid.

80 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, pp. 29-30.

81 Information available from:
<http://www.deewr.gov.au/Employment/JSA/Documents/FINAL%20AAF%20Fact%20Sheet.pdf>
f accessed 12 May 2009.

It is a competitive tender and is done on an ESA – Employment Services Area – area-by-area basis. We get lots of tenders for many areas. So it may not necessarily be that someone had a poor or unsatisfactory tender, it might just mean that they were slightly outcompeted by the top ones in that particular ESA. They may well have had a very good tender but not quite as good as the ones who got up.⁸²

Comment

Having heard suggestions made by witnesses on processes other than the competitive tender process, the witnesses themselves acknowledged they would all appear to diminish the probity of the process to a greater or lesser degree. Government senators do not rule out considering improvements to the process for the future but the principle of achieving value for money for the taxpayer through a robust, fair and competitive process must be the primary consideration. In addition, government senators note that the final decision took into account a range of issues, not only the quality of addressing the selection criteria but the unique combination for each ESA of coverage and sites on offer and the minimum and maximum business share an organisation was able to accommodate.

In particular, government senators note the need for tenderers to nominate the minimum and maximum business share they were willing to take. The RFT allowed for this to be discussed with the tenderers. DEEWR clarified that if all other things were equal and there was a 30 per cent business share to be allocated but the maximum business share an organisation could take was 27 percent then an organisation may miss out in preference for an organisation which could take on the business share required.⁸³

Selection criteria

There were four selection criteria: past performance (30 per cent); understanding and general strategies (20 per cent); local strategies (40 per cent); and management and governance (10 per cent). Each of these contained sub criteria to be addressed. Past performance was an area mentioned in submissions. It is also important to note that the 30 percent weighting given to past performance was made up of four other sub-criteria of which the star rating system was only one.⁸⁴

Past performance

A view was expressed that some organisations did not understand why their tender bids were unsuccessful as they had received good results in the star rating system.

82 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 27.

83 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 94.

84 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 32.

This view and the associated media attention is not new. Earlier tender announcements produced the same degree of media attention and speculation:

Many non-profit organisations which had been highly successful Working Nation program providers failed to win contracts in Job Network's first tender. This led to media speculation that the tender process had been manipulated. One informant was allegedly told by a member of an assessment team that their organisation had been rated highly but had still missed out on any business allocation. Other participants expressed the view that the tender process was not merit based.⁸⁵

By way of background, during the contract period, the performance of organisations was assessed using a 'star rating model' between one and five stars. The rating system was designed to take account of labour market regions, for example, to compare a 4 star rated organisation in a rural area with a 4 star organisation in a metropolitan area. It should be noted that PSP providers did not have star ratings but had a performance management framework where they were ranked in an ESA.⁸⁶

Government senators note that during the consultation period for this tender, one of the messages from industry was not to put too much weight on past performance but to look at delivering results in the future under the new system. The RFT clearly indicated that for services under streams 1 to 4, past performance was to be given a weighting of 30 per cent.⁸⁷ This figure was also included in the exposure draft of the tender and DEEWR indicated that no concerns had been raised.

The RFT documentation noted that 'past performance will be primarily assessed on the information provided in a tender. DEEWR may use past performance data as it considers appropriate'. It further noted that:

Tenderers should not rely on DEEWR using other sources of information, and should provide a comprehensive and complete set of performance information, including referee reports (where appropriate).⁸⁸

Evidence to the committee by tenderers acknowledged the significant shift in the focus of the program by combining a number of programs into a single multi-stream contract. It was pointed out that the weighting of 30 percent for past performance needed to be viewed in that context. Organisations which may previously have only delivered some services needed to be able to show that they could provide the

85 David Abello and Helen MacDonald, 'Job Network: changing Community Sector values', *The Drawing Board: An Australian Review of Public Affairs*, Volume 3, Number 1, July 2002, p. 54.

86 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 33.

87 Request for Tender for Employment Services 2009-12, p. 83.

88 Request for Tender for Employment Services 2009-12, p. 92.

complete range of services. It was therefore clear that past performance and success could only form part of the evaluation process.⁸⁹

This appeared to be understood as evidenced by Job Futures:

While comment has been made on the low weighting placed on performance, this probably over simplifies the problem. Purchasing decisions which had been made solely or predominantly on the Job Network star ratings of providers would not have delivered a good outcome.⁹⁰

Most tenderers recognised the shift in the focus of the program to a single multi-stream contract and that the weighting of 30 percent on part performance 'should be viewed as part of the overall context of the tender'.⁹¹ Tenderers were required to demonstrate an ability to provide a complete range of services to the four streams of job seekers. This meant that:

...organisations that had previously shown an ability to deliver a portion of the service (for example Job Network services only) needed to show their ability to deliver those services to a much wider client base...

...Although past performance can be an extremely good indicator of future performance it would be difficult to compare the results of an organisation in the delivery of one particular contract against the expected future delivery of Job Services Australia⁹²

NESA advised that although there were mixed views about the weighting for past performance:

...it would be fair to say that there were a significant number of organisations who felt that was appropriate, both high and low performers, because this was really about not only demonstrating what capacity you have been able to deliver in the past but how you could deliver in the new service delivery model.⁹³

Importantly NESA noted:

...a lot of the feedback about having the performance weighting at 30 percent was an issue that was brought up by a lot of smaller organisations who may have had mid-range to lower performance. But also certainly a lot of the people in the other program areas such as PSP and JPET who felt that if the performance weighting for past experience was too high it would lock them out of an unbiased process. There were a lot of views around having something that ensured everyone could compete for business and that past

89 MTC Work Solutions, *Submission 4*, p. 2.

90 Job Futures, *Submission 2*, p. 43.

91 MTC Work Solutions, *Submission 4*, p. 2.

92 Ibid.

93 Ms Sally Sinclair, *Committee Hansard*, 11 June 2009, pp. 54-55.

performance would not lock out potential providers who could bring different skill sets and experience to the table.⁹⁴

In relation to the question raised on past performance, DEEWR provided the following clarification:

In the first instance regarding the past performance, the 30 per cent and how that was assessed, and you mentioned star ratings, certainly that was one factor but the assessment of that criteria was actually much broader, and that for a number of reasons. First and foremost, star ratings only applied to a couple of the seven programs. They just did not exist for some programs. That is one thing to bear in mind.

The second thing is that the feedback from the industry was very strong on the fact—and this led to the improvements you mentioned—that the old star ratings were measuring different things and certainly do measure different things to the behaviour and outcomes that we want in the new model. In fact, there were questions around—even for the programs where they did exist—whether they were a good indicator of performance in the new world and the sort of behaviour and outcomes that were expected in the new model.

For that reason, where they existed they were taken into account. The RFT, based on that feedback from industry, was designed so that selection criteria 1, past performance, had three other subcriteria that allowed providers/tenderers to present any information that could demonstrate what their performance was, and is, in the sorts of services or similar services to the new world. Star ratings, for example, was only one subcriteria out of four and they all wrapped up into selection criteria 1, which in itself was only one of four.⁹⁵

Performance Management Framework from 1 July 2009:

Over the years, providers have reported that the performance management system is overly complicated, does not allow fair comparisons, discourages the skilling and training of job seekers and leads to business uncertainty. For the new system commencing on 1 July 2009, an updated performance management framework will be introduced. This information was included in the Request for Tender. The new framework was developed in consultation with an Expert Reference Group on performance management which was established in July 2008. DEEWR noted that Access Economics was selected to examine the technical elements of the new performance framework. This included close liaison with a Technical Reference Group which consisted of NESA and individual provider representatives. The group also considered the development of new performance data management information and the requirements for provider training. All providers had had the opportunity to

94 Ms Annette Gill, *Committee Hansard*, 11 June 2009, p. 65.

95 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 96.

comment on these developments.⁹⁶ The new framework, described as 'simpler, more transparent and robust', was announced on 9 September 2008 by the Minister for Employment Participation.⁹⁷

The new rating system will combine efficiency and effectiveness and quality. Performance ratings will be published every six months and provided to providers quarterly.⁹⁸ In particular:

There has been a thorough reworking of the ratings system, in particular to remove our former practice of rationing the number of ratings, a feature that was called fixed distribution and meant that the department set out in advance that only 5 per cent of performance could get a five star rating in the past...So that rationed approach of fixed distribution is being replaced by saying how much the results are above or below the average performance, taking into account the nature of job seekers and the local labour market considerations.⁹⁹

Comment

Government senators note that past performance was only part of the evaluation process and the success of a tender depended on the ability to show the capacity and explain the strategies to deliver the business model required. Government senators also note that with the significant shift in the focus of the program to the single multi-stream contract, it is clear that past performance, while a good indicator of performance in the current system, could only be a part of the assessment process. Success depends on the ability to deliver Job Services Australia. Organisations needed to demonstrate their ideas and capacity to deliver the new model. Government senators also note that there will be a new performance management framework from 1 July 2009 which has been developed in consultation with an expert reference group.

Preferred tender process

There was some criticism over the preferred tender process in mid-March when, as in many other large tenders, preferred providers were advised of their status so any issues involving their capacity to honour a contract could be raised. DEEWR said that it was understood that there was always the possibility that another provider may be offered business. In this case, DEEWR had just received the latest unemployment

96 Available from:
<http://www.workplace.gov.au/workplace/Programmes/JobNetwork/JobNetworkPerformance.htm>

97 Hon Brendan O'Connor MP, Minister for Employment Participation, Media release, 'New steps to measure provider performance outlined', 9 September 2008.

98 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, pp. 54-55.

99 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 55.

figures so they reviewed the system to ensure sufficient capacity. Therefore, there were a few providers not notified at this time but which were subsequently offered business in the final allocation.¹⁰⁰

Questions were raised regarding organisations not identified during the preferred tender process and organisations which subsequently received an offer of JSA business. DEEWR explained that as outlined in the RFT, the preferred tenderer period gave organisations an opportunity to bring issues which may affect their ability to deliver services to the department's attention. At this time the new unemployment figures provided a more detailed picture of the extent of the global financial crisis. As a result, a final review was undertaken to ensure the level of service available in locations was consistent with the demand for the service. The department's final decision saw four organisations that were not initially identified as preferred tenderers that subsequently received an offer of Job Services Australia business and nine organisations which received business in additional ESAs. Government senators note that this was an extension of the tender process and received the same detailed consideration, assessment and quality assurance all overseen by the external probity adviser which preceded the department's final decisions being made.

Results

The Minister for Employment Participation, the Hon Brendan O'Connor MP, announced the overall tender results on 2 April 2009¹⁰¹ and these included:

- 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.¹⁰²

100 Senate Education, Employment and Workplace Relations Committee - Legislation, Estimates Hansard, 1 June 2009, p. 36; Ms Golightly, DEEWR, *Committee Hansard*, 11 June 2009, p. 88.

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

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

In addition, there will be more than 2000 Job Services Australia sites across the nation, an increase from 1800 sites under the current system. It should be noted that 10 per cent of existing providers in Job Network did not tender.¹⁰³ Of the 140 contracts, 70 leads are existing providers and 49 leads are existing PSP providers. In JPET, 29 received lead contracts. There will also be many more as part of the subcontracting arrangements.¹⁰⁴

Specialist providers

Contrary to concerns that specialist providers missed out on contracts, 158 specialist contracts (63 organisations delivering 158 specialist services) were awarded. This is more than the current Job Network. These will include services for groups including the homeless, youth/youth at risk, people with a disability, ex-prisoners, people from Culturally and Linguistically Diverse backgrounds, people who are blind and visually impaired and refugees who have experienced torture and trauma. Of the 158 specialist services, there will be 48 Indigenous specialist services.¹⁰⁵ NESAs noted the significant number of indigenous specialist contracts awarded and that there are indigenous employment providers as part of formal subcontract and partnership arrangements with successful providers.¹⁰⁶

NESA also noted the increased numbers of specialist providers and of small organisations which were successful in gaining business. It added that many of these organisations were part of tendering partnerships with approximately 50 formalised subcontractors identified in successful bids. NESAs also noted that there are current providers which have formed collaborative and commercial service arrangements even though they have not been formally identified as subcontractors.¹⁰⁷

BoysTown told the committee that the design of the tender recognised the importance of specialist providers and advised:

Prior to the tender process BoysTown was assured by the Minister that specialist youth providers would be recognised in this tender process, particularly for areas where there existed high youth unemployment. This commitment was confirmed by the outcomes of the tender round.¹⁰⁸

Regarding whether the process was fair for smaller organisations, NESAs told the committee:

103 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 28.

104 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 31.

105 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 31.

106 NESAs, *Submission 13*, p. 11.

107 *Ibid.*

108 BoysTown, *Submission 11*, p. 4.

...we have had members that have been successful right across the spectrum from the smallest single site provider in Australia through to organisations that are obviously operating up to 100 sites. From where we sit, based on our membership, the diversity is certainly there in terms of the delivery going forward.¹⁰⁹

While noting the transaction costs can be high MTC Work Solutions explained that they are 'simply part of the business decision that organisations must make during their tender application process'.¹¹⁰

Subcontracting

Smaller providers were actively encouraged to seek out partnering and subcontracting arrangements with a lot more types of partnering arrangements available. DEEWR told the legislation committee that it understood 77 subcontracting arrangements had been entered into. Government senators note that this figure has increased from the 48 subcontractors announced on 2 April 2009. DEEWR explained that subcontracting arrangements and alliances are up to the individual providers and can be entered into at any time during the life of the contract.¹¹¹

Diversity of providers was encouraged. Purchasing arrangements were designed to offer opportunities for a wide range of organisations to be part of the service delivery network. Assistance to tenderers was provided by NESAs:

We ran a series of winning tender workshops around Australia. We repeated some in several states. We have had feedback from our members who attended those that they really believe they were very helpful to them and they perhaps provided them with some significant intelligence that assisted them in the tendering process.

We ran a comprehensive helpdesk facility ourselves. For those members who wished to take advantage of it we were a critical friend. I would not say that we did a tender writing process or an assessment process as such, but we did a critical analysis. For those who took advantage of that their results have been good through to very good.

With all of these things it is also a function sometimes of inputs and outcomes. Some people perhaps took more advantage of that than others, but everybody would have had equal opportunities across the membership.¹¹²

Specifically in relation to providing assistance for smaller organisations, NESAs told the committee:

109 Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 58.

110 MTC Work Solutions, *Submission 4*, p. 3.

111 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 27.

112 Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 58.

We took active measures to facilitate partnerships across the sector. We ran a range of initiatives, including on websites and we had connection workshops. Someone described it as speed dating for partnership in the industry. We are also aware, as a consequence of that, there were some smaller organisations that did successfully partner and have now got positive outcomes. How broad the issues were in terms of decisions to tender or otherwise is difficult for us to make an absolute determination on. Again, it would be fair to say that there would have been a mixed result. Also, there are some organisations that perhaps come from the complementary program area who did consortia bid and were not necessarily successful in the consortia bid but who are now working through collaborative arrangements with the successful tenderers on a sort of fee-for-service basis. They are keeping the services going and they are retaining their expertise by simply running a different model of organisational management.¹¹³

However, NESAs also noted that:

I would add that I am aware of a small number of providers who chose not to bid because they did not think the service model suited them. It was not about the process or the arrangements. The service model, particularly taking on a mainstream caseload as well as specialty groups, was not philosophically aligned with where they were at so they opted to pull out.¹¹⁴

Government senators note that the tender outcomes have seen more partnerships, alliances and subcontracting arrangements than were evident in past contracts.

International providers

In accordance with Commonwealth Procurement Guidelines and the free-trade agreement with the USA, the size of the tender required that it be advertised overseas. As noted above, the market share of two foreign entrants will be less than two percent.

Communication of results

DEEWR advised that a communication protocol was followed that had been signed off by the probity adviser. Communication of the results was criticised when technical problems with the DEEWR website resulted in the advice to tenderers, although posted on time, becoming unavailable, leading to a delay for tenderers to find out if they had been successful. Following these difficulties, the decision was taken to build a temporary website to ensure access to tender results. This went up around 6pm that day. Contractors were also contacted by email and, when it was clear that this too was being delayed, by telephone. DEEWR advised that the providers would have been advised by the time the temporary website went up at 6pm.¹¹⁵

113 Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 65.

114 Ms Annette Gill, *Committee Hansard*, 11 June 2009, pp. 65- 66.

115 Ms Golightly, DEEWR, *Senate Estimates Hansard*, 1 June 2009, p. 34.

The Secretary of the Department apologised for these difficulties

...Nonetheless, of course we were extraordinarily sorry that it happened like that, and in the end we had to get Microsoft in to work with us and even go to their HQ and so on to come up with a whole lot of fixes which will prevent it. It could not have happened on a worse day, of course, from our point of view...¹¹⁶

As a result of the technical difficulties DEEWR was criticised for causing unnecessary anxiety for the staff of providers. Government senators note that what needs to be made clear is that notifying staff of the results is a matter for the providers. In addition, as subcontracting arrangements were not concluded:

It would have been almost impossible to tell at that point who had a job and who did not because of course the clientele, the number of job seekers, is increasing dramatically – as we sit here – and there is plenty of work around...¹¹⁷

Unsuccessful tenderers were encouraged to seek a debriefing by DEEWR on the process¹¹⁸ as set down in the RFT.¹¹⁹ This could be done within three months and as at 1 June 2009, 122 organisations had requested a debrief.¹²⁰

Government senators note the differing views on the value of the debrief but consider that most found it to be of value, as evidenced by NESAs:

...some of our members, for example, with the current tender feedback process, who were very concerned about what seemed to be a counterintuitive outcome for them where they performed quite well under one or several current programs, have actually said to us, as a result of the tender feedback they have received, they now understand that their tender was not very strong or as strong as others—as a benchmark it might have been strong but not as strong as others—in relation to the criterion related to organisational and local strategies.¹²¹

Comment

As acknowledged by the government and the department, the timing of these technical difficulties, which delayed the announcement of successful tenderers, was unfortunate and several apologies were made. Government senators note the varied experience of communication with the department

116 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 35.

117 Ibid.

118 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.

119 Request for Tender for Employment Services 2009-12, p. 61.

120 Ms Golightly, DEEWR, *Senate Estimates Hansard*, 1 June 2009, p. 37.

121 Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 54.

and that the unsuccessful tenderers appeared to have made the strongest criticism about communication.

Government senators note the Return to Order Motion of 18 June 2009 mentioned in the majority report. They note the statement made by the Minister for Employment Participation in response to the Return to Order Motion. The statement gives reasons why the Return to Order has not been complied with and is reproduced below:

Statement by the Minister for Employment Participation in response to Return to Order made on 18 June 2009

1. Having taken advice from my Department in regard to the potential scope of the Return to Order, noting that its scope is not clear, I have to advise the Senate that it is not possible to comply with the Order in its present form.
2. Indeed, it would not be practicable to comply with any similarly oppressive Order in anything like the timeframe provided, even if it was considered reasonable and appropriate to divert the substantial resources necessary to identify the documents caught by such a broad and uncertain request.
3. Further, considering the kinds of documents that would be within its scope, including potentially confidential communications relating to the business affairs of Commonwealth Service Providers (including the not-for-profit sector), and even the personal affairs of people who may wish to raise legitimate but sensitive concerns with the Minister, as is their right, it would be entirely inappropriate to table such documents without first making proper assessments as to whether the unqualified disclosure of such documents was appropriate and in the public interest (and did not unreasonably interfere with people's rights to privacy, or breach any appropriate confidences).
4. This government, more than any other government, has championed a pro-disclosure culture. But not at the expense of innocent third parties rights, including the right to be consulted before their personal information, or sensitive professional or commercial secrets are broadly disclosed or published. Such third parties should ordinarily expect the right to put their views as to why such publication is unreasonable, or worse, could cause them significant economic harm.
5. This return to order is oppressive. What is objectionable about it is that no reasonable basis has been established to justify the enormous diversion of resources that would be required to even begin to pull together the documents potentially caught in its scope.
6. In this regard I note that clause 1 of the Order is not limited in time, or subject matter, and would require a person (or more likely – many people) to identify all the current service providers and actual tenderers to this massive tender exercise, including their staff and possibly agents (a practical impossibility), whether or not such communication was remotely relevant to whatever it is the Opposition are alleging occurred. This preliminary exercise would be required even before forming a

view whether such a communication could be provided without causing unreasonable harm or interference to innocent third parties.

7. Surely the Senate accepts the appropriateness of a Minister meeting with those who provide contracted services relevant to his or her portfolio. The Communications Protocol for Dealing with Existing Service Providers and Tenderers clearly anticipates continuing interaction with relevant stakeholders as part of ongoing business. Put simply, the usual work must continue separate from the tender process. It would be inappropriate for it not to.
8. The previous Minister has publicly stated that the employment services tender was conducted strictly in accordance with probity arrangements and this has been supported by independent probity adviser who described the Employment Services tender as:

“represent[ing] 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”.

9. Even Senator Fifield has said in the current Senate inquiry into the tender process that probity is not an issue:

“There has not been much evidence calling into question the probity. The real question has been the efficacy of the process.”

10. Following the allegations made by the Shadow Minister and Senator Fifield, Mission Australia has advised the media in the following terms:

“We flatly reject any suggestion that we have in some way broken the probity rules governing the recent Job Services Australia tender.

As one of Australia’s leading providers of employment services, Mission Australia has regular two-way communication with DEEWR, its senior staff and the relevant Minister and the Minister’s office.

That’s a normal part of doing business – a normal part of running 93 employment service sites across the country.

The calls Mission Australia made to the Minister’s office in the period prior to Thursday 2 April (when the tender results became public) – the calls referred to by the Shadow Minister – were logistical in nature and nothing to do with purchasing aspects of the tender.

To be even more clear, we made calls inquiring as to when the tender announcement would be made public and at what time could we tell our own staff about the results.

These contacts were part of a normal, regular exchange that happens between one of the country’s largest providers of employment services and government”.

11. While I do not believe there is any truth to the allegation Senator Fifield and the Shadow Minister have made, to satisfy the Senate, and for the benefit of Mission Australia who continues to operate in this sector, I have referred the specific issue to the independent probity adviser for specific advice and will advise the Senate accordingly.

Transition

The government has stated its determination to ensure the transition to the new system is as smooth as possible with minimal disruption to the providers and particularly job seekers. A Transition Reference Group has been established to enable providers to raise and resolve matters during the transition phase.¹²²

Dealing with staff redundancies

Government senators note the level of assistance being made available to unsuccessful tenderers to reposition and identify new opportunities. Assistance is also available for the staff of unsuccessful tenderers to enable them to stay in the sector as their skills will be in demand from new providers. In addition, there is also assistance for job seekers to explain the changes to them to ensure as little disruption to the provision of services as possible.

The media reported that a number of jobs would be lost as a result of the tender outcomes and the government was criticised for making a contribution to unemployment at a time of rising unemployment. Government senators note that after the announcement of successful tenderers, negotiations would have commenced for subcontracting arrangements with them. Continuing negotiations may mean that some organisations which were unsuccessful will be sub-contracted by successful tenderers. Therefore the full picture regarding employment is yet to emerge.

In addition, government senators note there is strong demand for employment services in the sector and therefore net employment in the sector is likely to rise even if some providers were unsuccessful.

NESA told the committee:

We are running a conference around the corner today for all the frontline workers in the new Job Services Australia model. Just on reflection, it was interesting that when we were asked for a show of hands on how long people had been in the industry over 80 per cent of them put their hand up saying they had been in the industry for six years or more.

We are getting a sense that to the extent that people want to stay in the industry they are being recruited...

There has been a lot of really good practice happening at a local level where incoming providers and exiting providers are trying to do as much as they possibly can to facilitate retention of people in the industry. Where those practices have happened we are encouraging our members to do that and we are working with the department to try to facilitate that as far as they possibly can. We know there has been really good retention rates. We have

122 Support for providers and affected staff to transition, available from: <http://www.deewr.gov.au/Employment/JSA/Documents/FINAL%20AAF%20Fact%20Sheet.pdf> accessed 12 May 2009.

had some good models where literally whole sites of people have been recruited by the incoming organisation.¹²³

Regarding some allegations in the media that salaries were being reduced, NESAs told the committee they had seen no evidence of this. In fact:

We have had a lot of feedback that people have gone across on the same if not better arrangements.¹²⁴

NESA emphasised that recruitment is still occurring so the final situation regarding employment will not be known for some time. In summary, NESAs told the committee that regarding the transition for the staff on unsuccessful tenderers:

...we do not have any evidence base to suggest people are taking marked drops in pay and that the transition, by and large, is absorbing existing workers into new organisations, so minimising some of the displacement.¹²⁵

To assist the transition to the new system, the government has announced assistance for those affected by the outcomes as detailed below.

Assistance for the unsuccessful tenderers

As noted above, debriefing sessions were offered to unsuccessful tenderers to inform them of how the organisation's results were decided.¹²⁶ While providers will continue to be paid to provide full services to job seekers until the end of June, unsuccessful tenderers will be able to apply to the \$3.5 million Business Adjustment Fund to help them to re-orient their business and identify new activities. This amount includes \$500,000 for a panel of specialist business advisors to assist them develop a business plan to reposition the organisation and identify new opportunities. Not-for-profit providers will be able to apply for grants of up to \$100,000 to provide time to establish new plans and secure new revenue opportunities.¹²⁷ The upper limit for the small business adviser was \$15,000.¹²⁸

DEEWR advised that 37 organisations received an adjustment grant plus small business advice. In addition, another 11 organisations obtained small business

123 Ms Sally Sinclair, *Committee Hansard*, 11 June 2009, p. 61.

124 Ms Sally Sinclair, *Committee Hansard*, 11 June 2009, p. 62.

125 Ibid.

126 Information available at: http://www.workplace.gov.au/NR/rdonlyres/CEA2DC1E-7128-47D7-BBB1-17F2E8CED65E/0/Debriefing_Schedule.pdf accessed 19 May 2009.

127 Information available from: http://www.workplace.gov.au/NR/rdonlyres/978EBA80-B53E-4282-A1AC-FBCECEB4FF48/0/Job_Services_AustraliaSupport_for_Providers_and_Affected_Staff_to_Transition.pdf accessed 19 May 2009.

128 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 26.

advice.¹²⁹ This initiative was welcomed by NESAs to provide an opportunity for organisations to receive support which has not previously been available.¹³⁰

Assistance for the employees of unsuccessful tenderers

NESA emphasised the range of assistance available to limit the loss of skills from the industry.¹³¹ Noting there is a high demand for employees with the skills to provide employment services, employees of the unsuccessful tenderers will be able to register with NESAs should they wish to continue to work in this area. Successful tenderers will be able to use this register to find new staff.¹³²

Government senators note that after the contracts were announced on 2 April 2009 the process has continued with negotiations commencing between the smaller community firms that missed out negotiating commercial subcontracting arrangements with the successful firms. Therefore the final picture regarding the unsuccessful firms has not been finalised.

An ameliorating factor will be the strong demand for employment services skills. Those who lose their jobs with an unsuccessful provider should be able to move to other successful providers who will need their skills. For example, MAXEmployment has begun a recruitment drive to boost staff of 460 to around 1000. The Managing Director said that priority would be given to workers from the unsuccessful tenderers.¹³³

In addition, Campbell Page will be looking for around 300 extra employees and its chief executive has said they will be looking for the extra staff from providers who had been unsuccessful in the tender process.¹³⁴

Government senators note the committee was told of bidding wars for experienced staff.¹³⁵ In this context, Mr David Thompson from Jobs Australia noted:

...the new employer is operating in a market and they have to pay enough and provide conditions that enable them to get and keep good people. If some of them can do that by paying less I would be surprised...¹³⁶

129 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 26.

130 NESAs, *Submission 13*, p. 8.

131 NESAs, *Submission 13*, p. 4.

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

133 Daryl Passmore, '\$100, jobs coup', *Sunday Mail Brisbane*, 5 April 2009, p. 17.

134 Alexander Symonds, 'Jobfind staff looking for work', *AFR*, 4 April 2009, p. 5.

135 Ms Sally Sinclair, *Committee Hansard*, 11 June 2009, p. 62; Mr David Thompson, Jobs Australia, *Committee Hansard*, 11 June 2009, p. 77.

136 Mr David Thompson, Jobs Australia, *Committee Hansard*, 11 June 2009, p. 77.

Assistance for job seekers

DEEWR estimated that the number of job seekers in transition from one provider to another will be fewer than for equivalent tenders in the past. An early estimate is around 47 per cent compared to around 80 per cent or 100 per cent in previous large tenders.¹³⁷ DEEWR told the committee:

In terms of jobseeker numbers, obviously this is a big transition and they are still only estimates, but we will know a figure on 1 July. The estimates are around the 47 per cent to 48 per cent mark of jobseekers that will change providers. In terms of comparisons historically with other comparable tenders, for example, the very large one in 2003, I think the relevant figure there was 80-odd per cent...Of course, in the very first tender it was 100 per cent. Comparative with other comparable tenders there is much less disruption this time around.¹³⁸

Specific actions taken include a letter sent to job seekers informing them of the changes to employment services and the transition to the new system¹³⁹ and the establishment of a hotline to answer questions.¹⁴⁰ To ensure a smooth transition for job seekers to Job Services Australia providers, a 12-month transition period was also announced.¹⁴¹ Disruption will be minimised by referring job seekers to continuing providers so they will not have to change on 1 July. In the case of the Personal Support Program, DEEWR is working with providers so that if there is a change of provider, they will personally hand them over to the new provider.¹⁴²

NESA noted that while some disruption is inevitable it should be remembered that the current employment service framework was no longer meeting the needs of those involved.¹⁴³

ACOSS acknowledged the efforts undertaken for this transition:

So far the process is somewhat smoother than it was in 2003 when the last full tender occurred. That process was a real mess. I think it is fair to say that a great deal of effort has been taken this time around to transition

137 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 39.

138 Ms Golightly, *Committee Hansard*, 11 June 2009, p. 90.

139 Hon Brendan O'Connor MP, Media Release, 'Job seekers to receive letters about new employment services', 6 May 2009.

140 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 40.

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

142 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 59.

143 NESA, *Submission 13*, p. 9.

people smoothly from one provider to the next, and in particular providers are being asked to take steps to contact jobseekers directly. In 2003 it was left to the jobseekers to knock on the door of the providers and when that did not occur, in many cases, people were penalised for that.¹⁴⁴

Comment

Government senators understand that there will be some employees in unsuccessful organisations who will be affected by the tender results. The major changes required to improve the system meant that not all organisations would be happy with the results. However, the changes in the sector are expected to provide growth opportunities where employees of unsuccessful tenderers should be able to move to other providers who will need their assistance. Government senators expect that given the high demand for skills, redundant employees will be able to find work with new providers. The committee received mixed advice from submissions on the employability of redundant case workers, but concerns that organisations will bring in their own staff are not borne out in the statements from successful providers that they will be looking for extra staff from the unsuccessful organisations. There was stronger evidence to the contrary. To facilitate this, government senators note the process set up where employees of unsuccessful tenderers are able to register with the National Employment Services Association (NESA) should they wish to continue to work in this area. Successful tenderers will be able to use this register to find new staff.¹⁴⁵

In addition, government senators note that final negotiations have been underway where firms which have missed out may be able to negotiate commercial sub-contracting arrangements with the successful tenderers. Therefore the complete picture has not yet emerged.

Conclusion

Government senators emphasise that the committee could identify no probity issues in relation to the tender process. It is clear that the department is experienced in carrying out the tender process and undertook a sophisticated process which was signed off by an external probity adviser.

The government notes that the tender processes conducted by the previous government along with their outcomes were not without criticism.¹⁴⁶ As with this process, there were contract winners and contract losers, for example, when Mission Australia missed out on a major contract in 2003.¹⁴⁷ The committee found nothing

144 Mr Peter Davidson, ACOSS, *Committee Hansard*, 11 June 2009, p. 34.

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

146 See Lindsay Tanner, Shadow Minister for Finance and Cheryl Kernot, Shadow Minister for Employment and Training, Media Statement 'Duo Cripples Employment National', 1 November 2000.

147 Ellen Whinnet, 'Contract loss ends 70 jobs', *Mercury*, 27 March 2003, p. 11.

unusual in this process and government senators suggest that the current economic circumstances may have drawn extra attention to it.

Assertions that the model was conceived in better economic times and lacks the flexibility and responsiveness to cope with higher unemployment levels is highly speculative. The department has demonstrated that the reverse is true. The model is demand driven and has already been adapted so that workers who lose their jobs as a result of the global recession are placed into stream two where they can access assistance from day one rather than having to wait.

The RFT was developed after wide consultation with stakeholders. Government senators note that changes to Job Network were identified and requested by providers through the consultation process. There was general agreement that a reform of the system was necessary to deliver better and more effective services to job seekers, particularly the disadvantaged. As part of the consultation process there was provision of a discussion paper, information sessions and a draft RFT prior to the release of the tender. Changes were made as result of comments received.

Some providers told the committee that the weighting given to past performance in the RFT was too low. Government senators point out that the 30 per cent weighting was developed through the consultation with stakeholders and had the general agreement of industry. With the benefit of hindsight, since it has not worked in their favour, some now feel they have grounds to criticise. Providers recognised the significant shift with the new model and acknowledged they had to be able to demonstrate that they could deliver the new model and services. To address issues raised about the performance framework over the years, a new framework will be introduced from 1 July 2009 which has been developed with industry.

DEEWR advised that the quality of tenders was generally high. In assessing the tenders for each ESA, DEEWR told the committee the factors taken into consideration included not only past performance and the written documentation but the coverage of the area, bid ranges (minimum and maximum business share), diversity, meeting the needs of specific client groups, subcontracting arrangements and value for money. Government senators emphasise that the outcome for each ESA was a different combination of all these factors.

Smaller organisations were encouraged to pursue partnerships and subcontracting. The result has been a higher number of community organisation in the top 20 providers and an increase in the number of specialist providers. Subcontractors may come on at any time and not all had been decided at the announcement of the successful tenderers. Since then, the number of subcontractors has more than doubled.

Government senators also note that the process is continuing as negotiations have been underway between the successful tenderers and those who were unsuccessful for subcontracting arrangements. Some current providers had not tendered and continuing negotiations may mean that others will be sub-contracted by successful tenderers. Therefore a complete picture of the outcomes is yet to emerge. Government senators

also note there will be a strong demand for employment services skills and employees should be able to move to other successful providers who will need their skills. In fact a number of successful tenderers have stated that they will be looking for staff from unsuccessful tenderers.¹⁴⁸

An area which unfortunately did not run as smoothly as planned was the communication of results which was affected by technical problems with the DEEWR website. This has been acknowledged and apologies were made. When the extent of the technical difficulties was realised, a new temporary website was built and, where emails had slowed, providers were contacted by phone. Microsoft assisted the departmental IT officers to ensure it does not occur again.

Government senators listened to the concerns from the not-for-profit sector. While noting these organisations have been part of competitive tendering processes for 11 years and have been very successful, the government has acknowledged the difficulty of recognising the contribution of the not-for-profit sector in the tender process and the valuable additional community benefits and services provided. To address this problem, government senators welcome the study underway by the Productivity Commission with its focus on improving the measurement of the sector's contributions. Government senators also note work underway by an industry reference group to assess alternative purchasing and incentive models and processes to capture more qualitative checks and balances. These findings are likely to inform future processes.

Senator Gavin Marshall

Senator Jacinta Collins

Deputy Chair

148 Daryl Passmore, '\$100, jobs coup', *Sunday Mail Brisbane*, 5 April 2009, p. 17; Alexander Symonds, 'Jobfind staff looking for work', *AFR*, 4 April 2009, p. 5.

