

The Senate

Education, Employment
and Workplace Relations
References Committee

DEEWR tender process to award employment
services contracts

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Senate Standing Committee on Education, Employment & Workplace Relations

References Committee

Members

Senator Gary Humphries, Chair	LP, Australian Capital Territory
Senator Gavin Marshall, Deputy Chair	ALP, Victoria
Senator Chris Back	LP, Western Australia
Senator Michaelia Cash	LP, Western Australia
Senator Jacinta Collins	ALP, Victoria
Senator Sarah Hanson-Young	AG, South Australia

Participating senators for this inquiry

Senator Mitch Fifield	LP, Victoria
Senator Helen Kroger	LP, Victoria
Senator Rachel Siewert	AG, Western Australia
substituting for Senator Sarah Hanson-Young	

Secretariat

Mr John Carter, Secretary
Ms Lyn Beverley, Principal Research Officer
Ms Jacqui Phillips, Senior Research Officer
Ms Katie Meyers, Research/Estimates Officer
Ms Lauren McDougall, Executive Assistant

PO Box 6100
Parliament House
Canberra ACT 2600
Ph: 02 6277 3521
Fax: 02 6277 5706
E-mail: eevr.sen@aph.gov.au
Internet: http://www.aph.gov.au/senate/committee/eet_ctte/index.htm

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Chapter 1

Introduction

Background to the inquiry

1.1 In early 2008, the government announced it would introduce a simpler and more effective national employment services system to replace the Job Network. On 27 September 2008, the government released a \$3.9 billion request for tender to deliver the reformed employment services from 1 July 2009. The new employment services would be named Job Services Australia: People, Skills and Jobs. The tender results were announced on 2 April 2009. The tender process and outcomes received criticism from some stakeholders which has resulted in this inquiry. The terms of reference are addressed in the chapters which follow.

Terms of reference

1.2 On 13 May 2009, on the motion of Senators Rachel Siewert and Mitch Fifield, the Senate referred the following matters to the Senate Standing References Committee on Education, Employment and Workplace Relations for inquiry and report by 25 June 2009:

- (a) the conduct of the 2009 tendering process by the Department of Education, Employment and Workplace Relations to award Employment Services contracts, with particular attention to:
 - (i) the design on the tender, including the weighting given to past performance and the weighting given to the ‘value for money’ delivered by previous and new service providers,
 - (ii) evaluation of the tenders submitted against the selection criteria, including the relationship between recent service performance evaluations in various existing programs (such as provider star ratings), selection criteria and tendering outcomes, and
 - (iii) the extent to which the recommendations of the 2002 Productivity Commission report into employment services have been implemented;
- (b) the level of change of service providers and proportion of job seekers required to change providers, and the impacts of this disruption in communities with high levels of unemployment or facing significant increases in unemployment;
- (c) any differences between the recommendations of the Tender Assessment Panel and the announcement by the Minister for Employment Participation of successful tenders on 2 April;

- (d) the transaction costs of this level of provider turnover, the time taken to establish and 'bed-down' new employment services, and the likely impacts of this disruption on both new and existing clients seeking support during a period of rapidly rising unemployment;
- (e) communication by the department to successful and unsuccessful tenderers, the communications protocol employed during the probity period, and referrals to employment services by Centrelink during the transition period;
- (f) the extent to which the Government has kept its promise that Personal Support Program, Job Placement Employment and Training and Community Work Coordinator providers would not be disadvantaged in the process, and the number of smaller 'specialist' employment service providers delivering more client-focused services still supported by the Employment Services program;
- (g) the particular impact on Indigenous Employment Services providers and Indigenous-focused Employment Services providers;
- (h) the Employment Services Model, including whether it is sustainable in a climate of low employment growth and rising unemployment, and whether there is capacity to revise it in the face of changed economic circumstances; and
- (i) recommendations for the best way to maintain an appropriate level of continuity of service and ongoing sector viability while at the same time ensuring service quality and accountability and maximising the ancillary benefits for social inclusion through connection and integration with other services.

Conduct of inquiry

1.3 Notice of the inquiry was posted on the committee's website and advertised in *The Australian* newspaper, calling for submissions by 28 May 2009. The committee also directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions. 23 submissions were received as listed in Appendix 1.

1.4 The committee conducted a public hearing in Melbourne on 11 June 2009. Witnesses who appeared before the committee are listed at Appendix 2.

1.5 Copies of the Hansard transcript from the hearings are tabled for the information of the Senate. They can be accessed on the internet at <http://aph.gov.au/hansard>.

Acknowledgements

1.6 The committee thanks those who assisted with the inquiry.

Chapter 2

Background

2.1 This chapter provides a background to the provision of employment services since the first competitive tender in 1997-98 and a description of the purchaser-provider model. It also briefly covers the role of DEEWR, the performance rating system and the considerable number of reviews and evaluations that have occurred over the years.

Background to employment services

2.2 As part of the 1996-97 Budget, the Coalition government announced its intention to replace the public provision of employment services through the Commonwealth Employment Service (CES) and its related agencies with a competitive employment services market.¹ Services have since been delivered through a combination of private and community-based (and originally also government) providers, known as the Job Network, under a purchaser-provider contract determined and managed by the now Department of Education, Employment and Workplace Relations (DEEWR).

2.3 Since the establishment of the Job Network in May 1998, three tender rounds, referred to as Employment Service Contracts (ESCs), have been undertaken:

- ESC1 ran from May 1998 to February 2000;
- ESC2 ran from February 2000 to June 2003; and
- ESC3 2003-2006, started on 1 July 2003 (in two stages).

2.4 Initially, contracts were to be contested every three years to ensure value for money and a competitive client service. The strategy for ESC3 was, in stage 1, to roll over around 60 per cent of the contracts based on performance (ESC 2006-09) with business set at a pre-set payment rate rather than determined by tender offers. The remaining 40 per cent went out to public tender. In the process, the remainder of the CES, trading as Employment National, was sold off to the private sector.² With stage

1 Steve O'Neil, Parliamentary Library E-Brief, 'Job Network, the 3rd Contract', issues 11 August 2003 and updated 26 September 2003, available from: <http://www.aph.gov.au/library/intguide/ECON/JobNetwork.htm> accessed 13 May 2009.

2 Hon Mal Brough MP, Minister for Employment Services, Media Release, 'Top performers Offered New Job Network business, 23 October 2002; Christopher Jay, 'JobSearch network in for another reorganisation', 11 October 2002.

2 of ESC3, around 95 per cent of business was rolled over to already-contracted providers.³

Composition of providers

2.5 The composition of the providers has changed substantially since ESC1. In 1998 the network consisted of private and community as well as government organisations with the private and community sectors gaining around two-thirds of the market for services, and the remaining third held by public providers. With ESC2 the market share of community-based and not-for-profit providers increased to around half, as did the share of private providers, whereas public providers were reduced to fewer than 10 per cent. ESC 3 more or less kept the same split between community, commercial and private providers as for ESC2 with half from non-profit organisations, 47 per cent commercial and three per cent local or state government organisations.⁴

Use of the purchaser-provider model

2.6 In announcing the initial reforms in 1996, the Coalition government listed four key objectives:

- to deliver a better quality of assistance to unemployed people, leading to better and more sustainable outcomes;
- to address the structural weaknesses and inefficiencies inherent in previous arrangements for labour market assistance,
- to put into effect the lessons learnt from international and domestic experiences of labour market assistance; and
- to achieve better value for money.⁵

2.7 A purchaser-provider approach was considered the best way to focus on outcomes rather than processes and to address criticisms of the CES, including lack of flexibility to target assistance as well as inefficiencies resulting from a lack of competition.⁶

2.8 In 2002, the Productivity Commission review of the Job Network, agreed with the application of the purchaser-provider framework to the Job Network.⁷ However, it

3 Matthew Thomas, Parliamentary Library, Research paper no. 15, 2007-08, 'A review of developments in the Job Network', 24 December 2007, pp. 2-3.

4 Chellel Murphv, 'New-look Job Network revealed', *AFR*, 28 March 2003, p. 15.

5 Sen the Hon Amanda Vanstone, Ministerial Statement 'Reforming Employment Assistance - Helping Australians Into Real Jobs', 20 August 1996.

6 For a comprehensive discussion of the purchaser-provider model in relation to employment services see Productivity Commission Report, pp 3.5-3.18.

7 Productivity Commission, Independent Review of the Job Network, Inquiry report No. 21, Canberra, 3 June 2002, pp. xxv-xxvi.

noted that provision by external organisations can be achieved through different mechanisms, such as licensing, competitive tenders, vouchers and franchising.⁸ This issue is further addressed in chapter four.

Role of DEEWR

2.9 Under the current model, the government has become a purchaser, rather than a provider of employment assistance. DEEWR purchases the provision of services to job seekers from a network of providers. DEEWR specifies, purchases and monitors services. It manages the tender process and the contracts with the providers. While not directly providing services to job seekers, DEEWR is ultimately accountable for the quality of services provided to job seekers and the achievement of results consistent with the department's outcomes and outputs.⁹

2.10 To purchase the services, the department runs the competitive tender process. In accordance with the Commonwealth Procurement Guidelines, the guiding principle has been the delivery of value for money to the Commonwealth. The tender process includes developing a request for tender, tender evaluation and announcement of results.

Performance of providers

2.11 During the contracts, the performance of providers across Australia was assessed by DEEWR using a star rating system which began in March 2001. Ratings varied from a minimum of 1 star, indicating room for improvement, to a maximum of 5 stars, which reflected excellent performance.¹⁰

2.12 The star ratings were determined using a norm referencing approach developed with the assistance of the South Australian Centre for Economic Studies. The ratings reflected the relative performance of the providers and conveyed no information about the absolute level of performance of the overall effectiveness of Job Network services. For example, a low rating did not mean a provider was not performing satisfactorily but that it was performing at a level below that of other providers.¹¹

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

9 ANAO Audit Report No. 32 2006-07, Administration of the Job Seeker Account, p. 32.

10 See http://www.workplace.gov.au/NR/rdonlyres/B2BB34FD-5BD8-448F-A280-83366B736F56/0/JNP_StarRating_web.pdf for a description of the system. See also ANAO Audit Report No. 6 2005-06, Implementation of Job Network Employment Services Contract 3, pp. 140-149 and Access Economics, Final Report, Independent Review of the Job Network Provider Star Ratings Method for the Steering Committee of the Review, March 2002.

11 DEWR, Submission to the Productivity Commission Independent Review of Job Network, January 2002, p. 41.

2.13 The Productivity Commission described the operation of the ratings as follows:

The star rating model is designed to assess the performance of Job Network members for each service in each region in which they operate. The model uses a set of performance indicators and associated weights based on the performance indicators outlined in the Job Network Contracts...A provider's actual performance is assessed against its expected performance where expected performance is adjusted to take account of variations in client mix (such as age, educational attainment and duration of unemployment) and local labour market conditions (adjusted using ABS unemployment rates and jobs growth). Scores are distributed between one and five stars such that 70 per cent of providers in a region are rated at three stars or better.¹²

2.14 In one of their reports, the ANAO emphasised that the star ratings were a comparative measure of performance, not absolute performance which means:

- each site's star rating compares it with every other site;
- if the performance of all sites across the Job Network were to change uniformly (up or down), their star ratings would not. Only a change in relative performance between any one site and all others can cause a change in a rating; and
- a site whose own performance is constant while the Job Network as a whole improves may experience a decline in its star rating.¹³

2.15 The ANAO found that the performance information was rarely used by job seekers to choose their provider and the ratings were primarily a means for DEEWR to press providers for higher levels of performance. While finding the system had value, the ANAO noted opportunities for the department to improve the transparency of the system and better inform job seekers how to use the ratings.¹⁴

2.16 Despite reviews which have concluded that the star ratings method is sound,¹⁵ over the years providers identified problems with the performance framework, complaining that it was overly complicated, does not allow fair comparisons, discourages the skilling and training of job seekers and leads to business uncertainty. To address these issues, a new performance framework will operate from 1 July 2009. This is further described in chapter three.

12 Productivity Commission, Independent Review of the Job Network, Inquiry report No. 21, Canberra, 3 June 2002, p. 4.16.

13 ANAO Audit Report No. 6 2005-06, Implementation of Job Network Employment Services Contract 3, p. 140.

14 Ibid, pp. 148-149.

15 Ibid., p. 148; Access Economics, Final Report, Independent Review of the Job Network Provider Star Ratings Method for the Steering Committee of the Review, March 2002.

Previous reviews and evaluations

2.17 A substantial number of reviews and evaluations of various aspects of the purchaser-provider model have been undertaken since the establishment of the competitive employment services market. These include:

- eight reports by the Australian National Audit Office (ANAO);¹⁶
- an OECD analysis of the Job Network¹⁷;
- an extensive Inquiry Report by the Productivity Commission in 2002;¹⁸
- an independent review of the star rating system by Access Economics in 2002¹⁹; and
- a significant number of reviews conducted by DEEWR and various other stakeholders.

16 See the following ANAO reports: Audit Report No.7 1998-99 Management of the Implementation of the new Employment Services market; Audit report No 44, 1999-2000 Management of Job Network Contacts; Audit Report 51, 2004-05 DEWR's Oversight of Job Network Services to job Seekers; Audit Report 6, 2005-06 Implementation of Job Network Employment Services Contracts 3; Audit Report 49, 2005-06 Job Placement and Matching Services; Audit Report 32, 2006-07 Administration of the Job Seeker Account; Audit Report 38, 2007-08 Administration of the Job Network Service Fees and; Audit Report 17, 2008-09 Administration of Job Network Outcome Payments.

17 J. Quiggin, 'Contracting out: promise and performance', Economic and Labour relations review, 13:1, 2002. Note: The Parliamentary Library 2007 research paper notes that the OECD was heavily reliant on information provided by the Coalition Government and as a result the findings solely mirror those reported by DEWR in its earliest evaluations of the Job Network.

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

19 Access Economics, Final Report, Independent Review of the Job Network Provider Star Ratings Method for the Steering Committee of the Review, March 2002.

Chapter 3

The tender process

3.1 This chapter covers the period from the initial consultation processes prior to the release of the tender through to the preferred tender process. It describes the employment services model, the timing of the tender, the assessment process, the weighting given to past performance and the concerns of specialist and not-for-profit providers.

3.2 Much of the dissatisfaction which has been strongly expressed by unsuccessful tenderers lies in the apparently inexplicable failure of the tender process to acknowledge the solid performance of many not-for-profit service provider applicants. Serious concerns were expressed regarding the design and structure of the tender process. What is also open to question is whether an excessive preoccupation with probity procedures has not resulted in the loss of valuable community support networks which have been laboriously constructed over a number of years. Much of the evidence in the inquiry invited the committee to consider whether the tender process has put important social infrastructure networks at risk.

3.3 The committee majority is also left with unanswered questions about probity issues related to the tender process. Although a probity adviser was employed to oversee the process, why further providers were added in April to the list of preferred providers drawn up in March has not been satisfactorily explained. The committee majority takes the view that the disbursement of \$4.9 billion in public funds through this exercise requires the highest levels of accountability and disclosure.

Background to the release of the tender

3.4 In early 2008, the government commenced a review of employment services to address concerns raised by providers and stakeholders. It was argued that the number of programs needed to be reduced; that the system was inflexible and did not allow the individual needs of job seekers to be adequately taken into account; more assistance was required for highly disadvantaged job seekers; the administrative burden placed on providers had increased; there was a need to have better links between employment services and training opportunities and there was dissatisfaction with the star ratings for provider performance.¹

3.5 Extensive consultation was undertaken prior to the release of the Request For Tender (RFT) which included the release of a discussion paper. This proposed a streamlined model of employment services with job seekers assessed and placed in

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

one of four streams according to their level of need.² An exposure draft of the RFT was released and consultations on the exposure draft were held around the country.³ Submissions were received on the discussion paper and the draft RFT and changes were made to address concerns raised.

Timing of the tender

3.6 The tender was released on 27 September 2008 and closed on 14 November 2008.⁴ This process coincided with a worsening of the economic outlook, and the government received some criticism in regard to the perception that the tender took no account of this. DEEWR maintained that there was no capacity to extend programs as 95 per cent of the current Employment Services Contract and Funding Deeds expire on 30 June 2009. For other programs such as Personal Support Program (PSP) and Job Placement, Employment and Training (JPET), the Department of Education, Employment and Workplace Relations (DEEWR) advised that it would be impractical to extend these programs because they were incompatible with the fundamental changes in the way they would need to operate under the new streamlined model.⁵

3.7 DEEWR told the committee that according to internal legal advice the current contracts could not be extended. As defined under the Commonwealth Procurement Guidelines, this would be a new procurement and it was necessary to run a competitive tender process.⁶

The tender process

Role of DEEWR

3.8 The competitive tender process was undertaken by DEEWR. The process was supported by governance arrangements, tender guidelines and training for staff undertaking the assessments. The considerable experience and comprehensive training and support for those involved was emphasised by DEEWR

...Right from the beginning we set out very detailed guidelines of what procedures and protocols are to be followed at every single stage, whether it be assessment or quality checking or review—any of the stages. That is followed up by extensive training of the assessors. There are teams of two people at all times and...we do up to about seven layers of checking of that assessment. With all of this, including the guidelines and training, as well

2 Ibid., p. 7.

3 Ibid., p. 9.

4 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_Tra nsition.pdf, accessed 19 May 2009.

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

6 Ms Golightly, DEEWR, *Committee Hansard*, 11 June 2009, p. 82.

as the assessment and decision making, the probity adviser is involved and checks off each step of the way to make sure that we are adhering to objectivity, fairness and value-for-money principles, as do our own internal legal people.⁷

3.9 DEEWR advised the committee that they received advice on best practice processes from their external probity adviser.⁸

Independent probity adviser

3.10 The tender process was overseen by an independent probity adviser from Clayton Utz and was conducted at arms length to government. DEEWR advised that the probity adviser provided an unqualified sign-off on the conduct of the whole tender process.⁹

3.11 Clayton Utz advised that their role was to:

...ensure that the process was conducted by the department fairly, transparently and in an ethical and equitable manner, and that due process was followed.¹⁰

3.12 Clayton Utz concluded that the tender process was very well run 'and compares favourably, in our experience, with the best managed of other Australian Government procurement processes'.¹¹

Contact with DEEWR during the tender process

3.13 Once the RFT was released, tenderers were able to ask questions and submit views.¹² MTC Work Solutions advised that questions had to be emailed to DEEWR but a response time was not guaranteed and suggested that 'in some instances waiting for over a week for a response could have had a significant effect on the design of a tender'.¹³

3.14 NESAs confirmed that the tender help line was ineffective as no information could be directly provided and callers were instructed to email the tender inbox which

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

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

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

10 Clayton Utz, *Submission 9*, p. 1.

11 Clayton Utz, *Submission 9*, p. 3.

12 Senate Education, Employment and Workplace Relations Committee - Legislation, *Senate Estimates Hansard*, 1 June 2009, p. 43.

13 MTC Work Solutions, *Submission 4*, p. 4.

was not responsive. It cited delays of up to two weeks and reported that some questions were not answered at all.¹⁴

3.15 The committee was told that information provided to tenderers must necessarily be limited and DEEWR officers were appropriately circumspect in view of the need to ensure that individual tenderers were not advantaged by the contact with the department.

3.16 The committee majority notes that, in analogous circumstances, tender committee in a purchaser-provider model can include representatives of the user groups (for example in this case a business person who is an end user of the training programs, a past service provider and/or a past trainee of the program). The tender committee in the present instance was comprised solely of department personnel who have never been either providers or recipients of the service.

3.17 A committee with broader membership may have been helpful in this process. The drawbacks of relying solely on written submissions may have come to the surface if people other than departmental officers were included on the panel.

Committee view

3.18 While it is not possible for the committee to make a judgement about the department's treatment of answers to questions from tenderers, the committee majority believes that waiting for 1-2 weeks for a response to a question when it could affect the preparation of a tender is unsatisfactory. At the very least some indication of the timeframe for a response should have been provided to tenderers.

Recommendation 1

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

Reliance on the tender submission

3.20 Tenders were submitted as written documents, and witnesses told the committee that the experience was very much like writing an essay. Some argued that there was an over-reliance on the written tender documents. There are two issues. First, smaller organisations lack the resources to develop complex tender documents. Second, there appears to have been an over-reliance on the claims presented in the tender which, in some cases, did not seem to have been verified. In relation to the first issue, Catholic Social Services Australia (CSSA) commented that:

The issue here is that because the tender selection process is based almost solely on the written tender submission, the list of winners will be biased towards those organisations that can 'talk the talk', whereas many that have

14 NESAs, *Submission 13*, p. 10.

long demonstrated their ability to 'walk the walk' are disadvantaged in the selection process.¹⁵

3.21 The over-reliance on written statements was a common theme in submissions. The Australian Council of Social Service (ACOSS) stated:

The playing field appears to have been tilted in favour of those with a strong submission, as distinct from a strong performance in the field.¹⁶

3.22 Witnesses told the committee that the only way to respond to the tender was by a 'character limited, electronic word document'. While acknowledging the need for a degree of uniformity some tenderers found this format too restrictive to allow the 'full extent of the innovation, relevance, passion and commitment of the organisation to be expressed'.¹⁷ This was also noted by Job Futures which struggled to tell the story of its model, its national performance and the local stories of its members.¹⁸

3.23 There was a perception of a lack of checking and verification of claims on the part of DEEWR. MercyCare said that in their view:

...the entire tender lodgement and assessment process was done with no discussion, validation or correspondence between DEEWR and the tenderers. This limited the scope of responses and significantly reduced its effectiveness of the tender process.¹⁹

3.24 Mr Peter Davidson, Senior Policy Officer, ACOSS, warned the committee that the tender process with its emphasis on written submissions, did not take into consideration 'that factor X that does not appear in a submission and cannot be taken into account in detailed scoring'. He explained:

It is a bit like interviewing jobseekers for a position. When you actually get them in the room and talk with them you find that they perform very differently, sometimes, to the impression you would have received from their application. To take that factor X into account you really need to engage directly with the providers and probably with other stakeholders in the area who have knowledge of the needs of local jobseekers. That is trickier because that would raise probity issues, but we think all of these issues should be explored for the next time around.²⁰

3.25 NESA also pointed out that there were concerns about how DEEWR could assess tenderers to deliver the proposed strategies and how the validity of claims within bids was assessed.²¹

15 Catholic Social Services Australia, *Submission 17*, p. 7.

16 Australian Council of Social Service, *Submission 18*, p. 5.

17 MercyCare, *Submission 8*, p. 6.

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

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

20 Mr Peter Davidson, ACOSS, *Committee Hansard*, 11 June 2009, p. 40.

21 NESA, *Submission 13*, p. 6.

3.26 NESAs indicated it had received no complaints about lack of contact with referees.²² However, successful and unsuccessful tenderers appearing before the committee were asked by the committee whether they were aware of their referees being contacted to verify claims. None were aware of this occurring.²³

3.27 DEEWR gave evidence that, where a provider was already known to the Department, its referees were not necessarily contacted, but where a provider was new to the 'system' the referees were contacted.²⁴ The committee majority feels that this creates a potentially-unlevel playing field, in that some referees were regularly contacted and others not. This might be said to create an advantage for new overseas tenderers, whose referees would all have been contacted under this policy.

Committee view

3.28 The committee majority notes the department's apparently heavy reliance on the written tender documentation and its inquiries through its own 'networks' about the performance of certain tenderers. It also notes with some concern the absence of any face-to-face exploration of bids with the proponents.

3.29 The committee is aware of time constraints and human resource implications of interviews. Nonetheless, the committee majority was concerned to hear from witnesses about an over-reliance on written submissions and the evidence of inadequate validation of claims made in the tender documents. It notes with sympathy suggestions that the process needs to include direct contact with short-listed tenderers, which may include an interview process. While it would be argued that such a process would add an element of subjectivity which might test the probity checks, this is a justifiable exercise in risk management.

Assessment

3.30 There are now 116 Employment Service Areas (ESA) across Australia, and organisations were required to nominate the ESAs they wished to compete for. Tenders were measured against each other on an area by area basis.

3.31 DEEWR explained the assessment process:

The assessment teams are teams of two people, who are experienced in employment services and also have knowledge about delivery on the ground. Those people assess those claims, checking them against other data that we might have or indeed that other Commonwealth agencies or state government agencies might have. We have other networks, of course, on

22 Ms Sally Sinclair, NESAs, *Committee Hansard*, 11 June 2009, p. 55.

23 For example see MercyCare, *Submission 8*, p. 6; Mr Ashley Reid, MercyCare, *Committee Hansard*, 11 June 2009, p. 8; Ms Karen McLaughlan, WAYS, *Committee Hansard*, 11 June 2009, p. 26; Ms Tracy Adams, CEO BoysTown, additional information, 15 June 2009; Mr Peter Davidson, ACOSS, *Committee Hansard*, 11 June 2009, p. 36.

24 Ms Malisa Golightly, DEEWR, *Committee Hansard*, 11 June 2009, p. 97.

the ground that we can check with. We have the experience with other programs that we might run that some of these linkages actually relate to. So there is a whole range of things. That assessment by those two people is then checked by a senior contract manager and also, at another level, by a state manager who knows all of those people who know the local area and the area that we are talking about. They do a comparative assessment, as well as a consistency check, and they overlay on all of that their knowledge of various things, including the local linkages. That then comes to a tender review committee that is, again, a committee of senior people in the department. All sorts of things are discussed at that committee, including the substantiation of claims, et cetera. All of that then leads to a recommendation.²⁵

3.32 DEEWR further explained how the tenders were assessed for each ESA.

...the tenders are all assessed for the particular ESA to which their bid applies. It is a contract on an ESA basis. The tenderers in ESAs would be assessed on their strategies, on their implementation, on their experience and on how they were going to apply those to the particular profile of job seekers, employers and the local circumstances of that ESA. The claims and proposed strategies of the tenderers would be assessed against all the selection criteria, but selection criterion 3, in particular, would be assessed on that basis.

Other things are taken into account as well, as per the RFT, in that decision. For example, we compare for that particular ESA what coverage different tenderers are offering us. One tenderer might be offering us one site, others might be offering us 10—and everything in between. We look at diversity of choice for job seekers in a particular ESA, and tenderers can bid for a particular range of business. They could bid for a minimum of 10 per cent and a maximum 50 per cent share of the market, for example. And then we have specialist bids—we mentioned the specialist providers as well, who are bidding for a particular cohort of job seekers.

All of those things end up being unique for each ESA. So you may well have had an identical bid from one tenderer, but it is compared to the circumstances of the local labour market and also compared to other bidders in that ESA. Some ESAs had up to 48 bids, so there was quite a lot to be considered.²⁶

Decision making

3.33 The tender process included seven levels of consideration and quality assurance:

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

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

1. a team of two experienced staff undertook an initial assessment of each tender;
2. senior account managers reviewed the assessment and moderated for consistency;
3. legally qualified staff oversaw a formal quality assurance process;
4. state managers undertook a further review and consistency check;
5. the Tender Review Committee (TRC) was comprised of senior departmental officials and it reviewed each proposed business recommendation;
6. the TRC further considered the assessment and reviewed tenderers' capacity to deliver; and
7. the TRC conducted a final end-to-end review to ensure the best results for job seekers.²⁷

Selection Criteria

3.34 Selection criteria included: understanding and general strategies (20 per cent); management and governance (10 per cent); past performance (30 per cent); and local strategies (40 per cent). Each of these had subcriteria and there were also specific selection criteria for particular services such as remote ESA and harvest labour services. Of these, past performance and local strategies attracted particular comment from witnesses.

Past performance

3.35 A number of organisations which were unsuccessful in the tender round expressed surprise at not being selected as they had received good performance ratings.²⁸ They questioned whether past performance had been adequately taken into consideration.

3.36 For instance, NESAs told the committee that:

The loss of experienced, skilled and high performing employment service organisations weakens the sector and its ability to meet the needs of Australian job seekers and employers. Providers including those who have been successful highlight that some outcomes on face value appear counter intuitive...²⁹

27 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.

28 Note: A 1-5 star rating system was used to compare providers during the contract.

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

3.37 On the issue of high performing organisations losing contracts, MercyCare noted the:

...removal of a large number of high performing agencies will impact adversely on many job seekers and that this will impose significant cost and disruption to the sector generally. The networks, partnerships and trust that we have established over many years can not be replicated overnight. New providers will take months, if not years to reproduce what has now been lost....³⁰

3.38 In particular, for their organisation MercyCare noted:

Given our record of high performance, there appears to be an anomaly between the feedback that we have received from DEEWR, regarding the strengths of proposal, and the attention paid by DEEWR to past performance in the assessment of our tender proposal.³¹

3.39 Mr Ashley Reid, MercyCare, further explained:

The strict adherence to the process ... does not necessarily make for a good outcome. A process can be robust and yet flawed. If sound performers with good track records, integrated services and solid working relationships with employers, community organisations and other government departments are excluded, then we would question the effectiveness of such a process.³²

3.40 Catholic Social Services Australia noted that with hindsight the 30 per cent weighing for past performance was inadequate for:

...allowing far too many proven performers to be dumped from the services on the basis of their written responses to selection criteria which we have already argued biases the results to larger, richer entities so often unproven in particular local areas.³³

3.41 This view was supported by the Australian Council of Social Services which also noted:

I think the issue here is the balance between probity and actually finding out how good a provider is. There is a tension there. You can have a process that is technically perfect and which is not open to the slightest external influence, but it will not produce the right result because the people making the decision do not have access to the information they need to make the right decision.³⁴

30 MercyCare, *Submission 8*, p. 3.

31 *Ibid.*, p. 5.

32 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 4.

33 Catholic Social Services Australia, *Submission 17*, p. 3.

34 Mr Peter Davidson, *Committee Hansard*, 11 June 2009, p. 35.

3.42 Jobs Australia also submitted that there were a number of instances where high performing providers with extensive track records and an undoubted capability to deliver the new suite of Job Services Australia services were unsuccessful or were offered substantially reduced levels of business.³⁵

3.43 NESAs advised the committee that during the consultation process industry members offered mixed views regarding the proposed weighting for past performance. Some wanted a higher weighting for demonstrated capacity to deliver high performing employment services over proposed strategies yet to be tested. On the other hand, it was recognised that it was not appropriate to use a high performance weighting for the delivery of current services for a significantly different model. NESAs noted that while there were mixed views 'it was commonly considered that those with demonstrated high performance would rate more highly on that criterion'.³⁶

3.44 DEEWR explained 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 strategies to deliver the business model required. It also depended on a unique combination of factors for each which included not only performance but coverage, range of business and diversity of choice for job seekers.

Committee view

3.45 The committee majority notes that there did not appear to be a consistent industry view regarding the weighting given to past performance. While acknowledging that consultation was undertaken with stakeholders, witnesses told the committee that in hindsight 30 per cent was inadequate weighting for demonstrated performance. The committee majority agrees with this view, noting that a direct product of inadequately valuing past performance has been the loss of hundreds of person-years of experience from the employment services market, as well as considerable goodwill and trust from jobseekers towards particularly staff members of unsuccessful services.

3.46 The committee majority rejects the argument that the arrangements under the new tender for Job Services Australia are more efficient and will result in any dramatic change to the way things are done. The essence of successful operations is the degree to which the provider can connect with disadvantaged individuals in search of jobs. Inevitably valuable expertise in that field is being lost by virtue of the tender outcome.

Local strategies

3.47 A weighting of 40 per cent was placed on local strategies and collaborative arrangements to achieve outcomes where the organisations were to refer 'to the unique

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

36 NESAs, *Submission 13*, p. 3.

characteristics of the local labour market' in describing the service they would provide to job seekers.³⁷

3.48 DEEWR explained the assessment of this selection criteria which had apparently resulted in confusion over some ESA results:

The issue is that the tenders are all assessed for the particular ESA to which their bid applies. It is a contract on an ESA basis. The tenderers in ESAs would be assessed on their strategies, on their implementation, on their experience and how they were going to apply those to the particular profile of job seekers, employers and the local circumstances of that ESA. The claims and proposed strategies of the tenderers would be assessed against all the selection criteria, but selection criterion 3, in particular, would be assessed on that basis.

3.49 The committee was told that tenderers could bid for whatever coverage they wanted within an ESA and the department aimed at awarding contracts to ensure a diversity of choice for job seekers in a particular ESA. In addition, there were specialist bids for a particular cohort of job seekers.

All of those things end up being unique for each ESA. So you may well have had an identical bid from one tenderer but it is compared to the circumstances of the local labour market and also compared to other bidders in that ESA. Some ESAs had up to 48 bids so there was quite a lot to be considered.³⁸

Committee view

3.50 The committee majority notes the potential disruption to staff and job seekers where high performing providers with knowledge, networks and expertise are replaced by new providers from outside the community. The committee is disadvantaged in having no insight into the reasons why decisions were made to award some tenderers contracts and not others. The explanation above is purely mechanical and does not explain why, for instance, an established and successful provider can be displaced by a tenderer with no local knowledge.

Barriers for smaller and specialist providers

3.51 The committee heard evidence from some specialist providers about how they found it difficult to tender in their own right for a particular target group. Barriers identified by Joondalup Youth Support Services, which did not submit a tender, included:

- that the fee for services model requires an initial injection of funds from the services provider as an office and staff need to be present before any payment

37 Request for Tender for Employment Services 2009-12, p. 84.

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

is received. This would be difficult for small and specialist providers who do not have the capital for this;

- the mission and values of many specialist providers is to work with those most disadvantaged in the community and therefore stream 1 and 2 clients is not the direction these agencies wish to take;
- the new model will require the provider to deliver a multitude of services, work experience, work for the dole, job matching, career guidance and post placement supports. Many of these would need to be subcontracted which would result in additional administration and financial management.³⁹

3.52 A perception of an inherent bias in favour of larger organisations was also identified by Indigenous Directions and Development Limited which believed that smaller organisation cannot compete at this level.⁴⁰ This view was also supported by Waverley Action for Youth Services.⁴¹ Ms Tracy Adams, CEO BoysTown acknowledged that it would be challenging for smaller organisations to find the resources and expertise to write their own tenders.⁴² NESAs, CSSAs and Ms Wilma Gallet also noted that the costs associated with the tender process can be considerable for stakeholders.⁴³

3.53 The relative size and resources of organisations was also noted by Catholic Social Services Australia (CSSA) which advised:

Such a model is biased strongly towards larger entities with substantial and costly business development and authorship expertise. Unfortunately, most small to medium-sized business, not-for-profit organisations do not have the resources to engage specialist tender writers and draw their tender writers largely from service delivery managers and staff...⁴⁴

3.54 Mr Frank Quinlan, CSSA, pointed to a linear reduction in the number of providers over the past decade and expressed his concern about the role of smaller providers:

...it seems to me that, notwithstanding the various rhetoric and invitations before the process began, that it is in fact those smaller community providers, the PSP based programs, those specialist services that have essentially been put at arm's length in this process. They have either missed out completely or they are at the end of subcontracting arrangements with major providers that I think, frankly, are going to end in tears and some of

39 Joondalup Youth Support Services, *Submission 1*, p. 2.

40 Indigenous Directions and Development Limited, *Submission 5*, p. 1.

41 Waverley Action for Youth Services, *Submission 7*, p. 5.

42 Ms Tracy Adams, *Committee Hansard*, 11 June 2009, p. 44.

43 NESAs, *Submission 13*, p. 14; Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 11; Ms Wilma Gallet, *Submission 21*, p. 4.

44 Catholic Social Services Australia, *Submission 17*, p. 7.

them, I already know, are beginning in tears, so even before the process gets underway. It is very difficult to see how, in a tight marketplace, an agency that is delivering services to the most vulnerable and most disadvantaged at the end of a subcontract is going to be rewarded and supported appropriately to do that work on an ongoing basis.⁴⁵

3.55 Mr Ashley Reid, MercyCare, described the reason some smaller providers did not participate in the tender process:

Seven programs were collapsed into single stream services and then 100 per cent of that was tendered. It is a double hit, if you like. I have spoken to small community providers in Perth, PSP single service JPET providers, who have said, 'We cannot provide stream services so we cannot tender.' The very design of collapsing seven programs into one and then putting 100 per cent of that to potential turnover is what has caused this incredible churn.⁴⁶

3.56 DEEWR advised the committee that smaller and specialist providers were encouraged to seek out partnerships and subcontracting arrangements with assistance given by the department and NESAs in this area. Some witnesses believed that subcontracting arrangements were the only real option for smaller organisations to continue and this may have written some current providers out of the process.⁴⁷

Committee view

3.57 The committee majority notes what appears to be a restriction of the market as evidenced by the reduction in the numbers of successful organisations. The tender process appears to favour larger organisations which have more resources at their disposal and with the capacity to inject capital and meet the administrative requirements. The committee majority acknowledges advice that the number of specialist providers has increased from the current Job Network.⁴⁸ However, it notes with concern evidence provided to the committee that many smaller organisations, with valuable experience and insights, felt unable to compete and decided not to tender at all.

3.58 The committee majority acknowledges the policy intention to encourage subcontracting and partnership arrangements to ensure the inclusion of smaller organisations. The evidence, however, from smaller organisations indicates these organisations face barriers to competing against large organisations in the tender process. The committee majority is concerned that smaller operators may have felt disadvantaged and effectively forced out. Ultimately this may lead to a loss of specialised skills. The committee will continue to question DEEWR on the

45 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 10.

46 Mr Ashley Reid, *CSSA, Committee Hansard*, 11 June 2009, p. 11.

47 Waverley Action for Youth Services, *Submission 7*, p. 2.

48 Ms Malisa Golightly, *DEEWR, Senate Estimates Hansard*, 1 June 2009, p. 31.

participation rates of displaced providers as sub-contractors when the market settles down once more.

Barriers for not for profit providers

3.59 Employment Service Contracts 2 and 3 saw the increasing number of church welfare agencies providing employment services. For this tender process, DEEWR advised that the mix of private and not for profits remains largely the same. However, it would appear that there has been churn in the not for profit sector.

3.60 The committee majority understands the logic of using a competitive tender process to ensure a level playing field but is concerned about the unintended consequence of a loss of community services once provided by the not for profit tenderers. As noted by MercyCare:

...we believe that overall outcome is inconsistent with the Government's commitment to social inclusion and to its commitment to developing a new Compact with the Community Sector. The process of this tender has not considered the consequential adverse effect on other community services provided by non profit agencies that have now been excluded from this employment service.⁴⁹

...the surplus generated from our employment service has been fully reinvested back into our other community, which will now be required to either close or significantly reduce the scope of their services.⁵⁰

3.61 This aspect as also noted by the Australian Services Union:

...a number of not for profit providers cross subsidised other community services programs and we note that there is an unintended knock-on effect to these services as a result of the loss of JSA contracts, which sees employees outside the employment services adversely affected by the JSA decisions.⁵¹

3.62 Waverley Action for Youth Services (WAYS) also explained that the organisation has:

used the employment services business model to subsidise the delivery of a range of other state and federally under funded programmes and initiatives that have met a range of community concerns.⁵²

3.63 WAYS told the committee that as a consequence of its tender loss, outreach services to 2000 young people will stop, reducing the alcohol and other drug and sexual health interventions designed to reduce the harm associated with binge

49 MercyCare, *Submission 8*, p. 3.

50 Ibid., p. 7.

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

52 Waverley Action for Youth Services, *Submission 7*, p. 1.

drinking. There will also be reduced availability of family, drug and alcohol counselling services to young people and families and a reduction in the hours of opening of the drop in youth centre and the closure of dedicated youth sexual health services and a proposed GP clinic in the Randwick area.⁵³

3.64 Mr Barry Sheehan, Director, Centacare Toowoomba, provided the following example of deprivation of service to the Sudanese population in Toowoomba:

We have a refugee migrant service. We have probably got three programs. They are partly funded out of the income we can generate from job services. Anyone can write in a tender, 'We have or will have significant links with Sudanese people.' I am really concerned about the Sudanese people. Our agency has a relationship with them. They are not going to go to newcomers straight away. It is the same with our Aboriginal clients. It is a real struggle.⁵⁴

3.65 The Australian Council of Social Services noted their concern that:

...the profile of providers may have shifted in ways that weaken the provision of high quality services for disadvantaged communities. This could occur if fewer resources are available to not for profit providers with strong connections in local communities, or providers that integrate their employment services with other community services for disadvantaged people such as homelessness or family counselling services (including specialist providers offering services under the JPET or PSP programs)...⁵⁵

3.66 Mr Frank Quinlan, CSSA, questioned the model that resulted in these outcomes:

...I hope more than anything else the inquiry has an opportunity to ask, even if implemented with probity, is this purchasing model the best way to ensure high quality services are provided to the unemployed, to their families and to the broader community...

We do not need to accept the premise that this iteration of the purchaser-provider model is a legitimate approach to the development and implementation of community services of this kind...

I think the most important question this inquiry can ask is whether this purchasing system and this tendering process is actually examining and valuing the things that good government would hope for in a system of services to the unemployed, or is it valuing only a very limited fraction of factors that can be measured relatively easily.⁵⁶

53 Ibid., p. 2

54 Mr Barry Sheehan, *Committee Hansard*, 11 June 2009, p. 9.

55 ACOSS, *Submission 18*, p. 5.

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

3.67 BJL Connecting Communities advised the committee of the inherent difficulty for the non profit sector of trying to fit into a business model:

It should be remembered the business of non profits is not business. The third sector is committed to a strategic direction that is ethically sound; holistically placed within their value system and that it is grounded within their philosophy and purposes. For many of the smaller non profits that were excluded from gaining a new Employment Service Contract their core business is social inclusion and they work to ensure that in this global society community-driven solutions to local problems is more than a Commonwealth Government statement – it is the reality we work in and achieve in everyday.⁵⁷

3.68 Commentators have drawn attention to a conflict within church organisations providing welfare services. Some claim that providing government services effectively corrupts the culture of the church welfare agencies and turns them into pseudo-state organisations. This may compromise their commitment to their religious beliefs or create conflicts of interest.⁵⁸ On the other hand the Salvation Army noted that the reverse could also be true, 'that church welfare methods have greatly influenced the programs provided for welfare recipients'.⁵⁹

3.69 A number of difficulties with the system were pointed out over the years by the agencies themselves and by surveys.⁶⁰ The transfer of government responsibilities to agencies made these organisations more responsible for compliance monitoring. Staff can face a tension between the mandatory reporting of welfare recipients who breach their obligations which would be in conflict with their responsibility to provide indiscriminate care.⁶¹

3.70 The tension for not for profits was mentioned by Mr Quinlan, CSSA:

For our organisation and for our member organisations there is a constant balancing act about the extent to which we are actually delivering services that arise out of our mission and the extent to which we are just merely providing services because they are available under government.⁶²

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

58 See for example Samuel Gregg, *Playing with Fire – Churches, Welfare Services and Government Contracts*, Centre for Independent Studies, Issue Analysis, 14 August 2000.

59 John Dalziel, 'Welfare role tests the faith', *The Australian*, 16 August 2000.

60 See Adele Horin, 'Cash-poor job agencies have given ethics the sack: report', *Sydney Morning Herald*, 23 November 2006, p. 3; 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; Misha Schubert, 'Job Network fails to help neediest', *The Age*, 21 July 2005, p. 9.

61 See also the concerns regarding the funding model raised by the Joondalup Youth Support Services, *Submission 1*, p. 4.

62 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 9.

3.71 The not-for-profit sector sees itself in partnership with the government to deliver employment services. The issue was well described by Professor Richard Mulgan:

Debates over the tender, and this inquiry itself reflect a clash between two views of the relationship between governments and private service contractors. On one view, service providers under contract are independent organisations with their own priorities and objectives who choose to align themselves with the government's specific requirements in order to seek material benefits for themselves. On the other view, service providers under contract are trusted partners of the government in the common goal of assisting those in need, a goal which they share independently of any contractual arrangement.⁶³

3.72 Professor Mulgan noted the model of a partnership with shared goals generally suits the not for profit providers such as church-based organisations. He advised that the classic contract model proved inadequate for more complex services such as IT and HR management because of the difficulty of specifying every requirement in advance.⁶⁴ Providers have certainly pointed to the increasing requirements and bureaucracy placed on third party providers over recent years.

3.73 The trend over the last decade has been towards 'partnerships' and 'alliances'. However this tender process which opened up all positions for competition has moved the model back towards the classic contract model to gain the advantages of specification and competition and to guarantee transparency and fairness.⁶⁵ Professor Mulgan explained that the reaction of not-for-profit organisations can be compared to that of a trusted employee who is told regularly that they are valued and then told their job is to be advertised in the interests of improving efficiency and out of fairness to other prospective employees.⁶⁶ Professor Mulgan argued that for future processes the government must decide whether to reinstate a preferential system or to open up all services to competition each time, noting:

The latter course has the advantage of transparency and fairness and allows ministers to avoid any accusations of favouritism. But it risks alienating the church groups, whose general support and assistance will be increasingly needed by government in a time of deepening recession and unemployment.⁶⁷

3.74 There is no doubt that the idea of a partnership with government is alive in the minds of these providers. For example, Catholic Social Services Australia told the committee:

63 Professor Richard Mulgan, *Submission 14*, p. 1.

64 Professor Richard Mulgan, *Submission 14*, p. 2.

65 Ibid.

66 Ibid.

67 Ibid., p. 3.

Community services are potential partners with government, not merely agents or providers of government services, and I hope this inquiry can make some very concrete recommendations about how this partnership might be fostered.⁶⁸

3.75 Mr Reid, MercyCare, expressed that:

...I am still struggling to convey the impact and the feeling of the loss of these services after 10 years of shared commitment to government programs to help the most disadvantaged.⁶⁹

3.76 Not for profit organisations emphasised that they are committed and most of their staff see the work as a vocation⁷⁰ instead of a 9-5 job and go above and beyond the contract requirements. Mr Reid explained:

Our staff, hard working and committed, do not do this for the money or the glory. People who work in the human services area do this because they have a genuine desire to contribute and to help those who are most disadvantaged.⁷¹

3.77 On the issue of commitment from not for profits, Mr Barry Sheehan told the committee:

A lot of the unemployed in Toowoomba, or a significant number at least, have barriers to employment. They have mental health issues, homelessness and substance abuse. Our staff work with them. It is not just about ringing an employer and saying, 'Let's get a job.' When we get those long-term unemployed people, 20 years unemployed, getting jobs, it is about the whole person. It is addressing the homeless. It is my staff going up to the psychiatric unit at 9 o'clock at night. They do not get paid for that. DEEWR does not pay them for that. They do it because they are committed to this process.⁷²

3.78 The committee heard a clear message that, for some traditional partnership providers, employment services were only one element to a whole-of-care program aimed at helping those in need. As Mr Reid of MercyCare stated:

We provide many community services beyond employment services. The ability to provide holistic care for people in very difficult circumstances was, what we thought, the strongest part of our tender and our bid, and the work that our staff did was many times above and beyond the black letter of the contract. I have seen people go out to employers at midnight, in their own time, to talk to shifts who have been made redundant in order to help

68 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 3.

69 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 3.

70 Waverley Action for Youth Services, *Submission 7*, p. 6.

71 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 3.

72 Mr Barry Sheehan, *Committee Hansard*, 1 June 2009, p. 5.

people. An Indigenous lady, just recently, brought her teenage son into one of our offices and said, 'This mob will help you get a job.' It is very difficult to recreate and to explain some of those local relationships that have occurred over time. I guess that is where our disappointment lies, in the people that we serve and whom, after 30 June, we will no longer be able to. Some of the richness of what the community sector brings to these services has been lost.⁷³

3.79 The committee was told that some staff of unsuccessful tenderers have felt so badly treated that they have decided to leave the sector altogether and taken their valuable experience with them. Mr Reid provided the following example:

...many of the staff have said, 'We're not continuing in this industry if this is how we'll be treated. It doesn't matter which provider we go to.' That is a loss of expertise, of knowledge and of relationship. That is more distressing because I would rather see those very hard-working, committed staff—as much as it is trying not to be sour grapes from an individual provider—continue to provide service and be retained in the sector, not retained by us per se, and a fair number will not be.⁷⁴

3.80 Jobs Australia also pointed out that staff are choosing to leave the industry 'because they have had enough of this rollercoaster approach to whether they do or do not have a job':

Where that is particularly poignant is, as an example, a Job Network agency that is a five-star provider that delivers PSP and is a high performing PSP provider, but they got nothing. They say, 'All of my hard work for nothing. I'm not going to stay here and keep doing that.'⁷⁵

3.81 As noted earlier in relation to responding to the RFT and the limitations in the application process, the difficulty of the competitive tender process for not for profits was explained by Mr Quinlan from Catholic Social Services Australia:

...there is very little opportunity to talk about the whole approach. There is very little opportunity to talk about, for instance, all the infrastructure, the capital renewal, the staff training, the history, the engagement with the community, the donors and all of that. It is very difficult to bring that into a process that is clear. I think that is perhaps crystallised in this particular DEEWR process that seems to have been largely a paper based process. It just simply has not given due weight to the additional value, in terms of the additional monetary value of all those commitments, but also the additional value for money in terms of the issues around respect for clients and the way in which people are treated, which is much harder to assess and much harder to put a dollar value on. As both of our directors have indicated, how you assess the value of the way a staff member treats an unemployed

73 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 4.

74 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 12.

75 Mr David Thompson, *Committee Hansard*, 11 June 2009, p. 77.

person with respect is a real challenge and it is something that is not easily gleaned from this sort of really tightly focused purchaser-provider sort of model.⁷⁶

3.82 From experience, Mr Reid advised the committee that the more integrated and holistic the service, the more difficult it is to describe it in the limited words and scope required by the tender process.⁷⁷

3.83 The issue of capturing this additional community benefit and how to achieve that was discussed with witnesses by the committee. Mr Quinlan explained the background:

...I think there is a very different set of circumstances when an agency effectively grows up out of a local community and then seeks opportunity to broaden its services, to provide services and to fund some of that work. That is a different circumstance to an agency that seeks funding and then finds a place to go and deliver those services. It is not necessarily to say that one is always better than the other. There is value in both. I think to be assessing those two agencies against the same metric is a mistake.⁷⁸

3.84 Mr Quinlan explained that he was not arguing against competition or to close the market⁷⁹ but that some of the outcomes appeared arbitrary and in the absence of an industry strategy it creates difficulties for community organisations about how best to invest in or support the process.⁸⁰ A view which emerged was that this additional community value could not be captured by a strictly paper based application. The selection process for employing staff, which usually includes an interview, was suggested as an analogy.⁸¹

Committee view

3.85 The committee majority is concerned that the outcomes of the tender process may have resulted in the unintended consequence of the loss to local communities of important social services.

3.86 Not-for-profit providers use government funding to support other more basic services to assist job seekers. They provide a more holistic service to disadvantaged job seekers hindered by barriers to employment such as alcohol and drug addiction and homelessness. Where such organisations which provide important additional community benefits have been unsuccessful in this tender round, the provision of

76 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 6.

77 Mr Ashley Reid, *Committee Hansard*, 11 June 2009, p. 7.

78 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 7.

79 Also mentioned by Mr David Thompson, *Committee Hansard*, 11 June 2009, p. 71.

80 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 12.

81 Mr Frank Quinlan, *Committee Hansard*, 11 June 2009, p. 7.

these community services is lost. The committee majority believes it is important that the additional services provided to the community by not-for-profit organisations are recognised in future processes to avoid the disruption and loss of such valuable community services. It appears that the government is unaware of the loss of social capital and community infrastructure as a consequence of distancing itself from partnership arrangements which were a feature of previous government policy.

3.87 The development of the new Employment Services model and the subsequent tender round took place in the context of a new government which came into office with a strong 'social inclusion' agenda, and a commitment to strengthening its relationship with social service providers through a compact with the third sector. The consultations around the new model picked up much of this language from government, focussing on increasing flexibility to meet the need of job seekers and local job markets, and on providing more integrated and holistic 'wrap-around' support. Taken together these factors would reasonably be interpreted by providers as a signal that the government was strengthening its commitment to a 'partnership' model, rather than retreating to a 'classic contract' model.

3.88 The committee majority also notes with concern evidence that some staff of unsuccessful tenderers in the not-for-profit sector are leaving the sector altogether as a result of the treatment through the recent tender process. This potential loss of skill and experience is a matter of concern in the current economic conditions with increasing numbers of unemployed requiring assistance.

Chapter 4

The tender process continued

Preferred tender process

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

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

Committee view

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

Late addition of extra providers

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

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

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

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

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

Business offers to providers who were not preferred tenderers

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

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

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

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

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

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

Ms Golightly—Yes, Senator.

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.11 Senator Cash went on to ask about these representations:

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

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

Senator CASH—Sorry, what was that?

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

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

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

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

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

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

...

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

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

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

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

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

Communication protocol and probity guidelines

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

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

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

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

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

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

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

4.16 The department's communication protocol states:

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

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

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

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

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

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

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

Question agreed to.¹⁰

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

Announcement of results

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

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

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

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

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

Communication of results

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

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

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

Recommendation 2

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

Transition

Effect on job seekers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 *Ibid.*, p. 16.

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

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

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

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

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

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

Recommendation 3

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

Recommendation 4

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

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

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

Job losses

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

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

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

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

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

4.52 Mr Joseph Ryan, WAYS, told the committee:

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

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

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

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

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

36 *Ibid.*, p. 17.

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

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

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

Committee view

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

Licensing of operations: an alternative to tendering

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

Conclusion

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

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

Recommendation 4

4.65 The committee majority recommends that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 5

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

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

Recommendation 6

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

Senator Gary Humphries

Chair

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 received 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, NESAs, *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>
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 past 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 NESAs 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.

APPENDIX 1

Submissions Received

Submission Number	Submitter
1	Joondalup Youth Support Services (Inc)
2	Job Futures Ltd
3	BJL Connecting Communities
4	Mark Chaffney
5	Indigenous Directions and Development Ltd
6	National NEIS Association
7	Waverley Action for Youth Services
8	MERCYCARE
9	Clayton Utz
10	Australian Services Union
11	BoysTown
12	Department of Education, Employment Workplace Relations
13	National employment services association
14	ANU COLLEGE OF ASIA THE PACIFIC
15	Confidential
16	Jobs Australia
17	Catholic Social Services Australia
18	Australian Council of Social Service (ACOSS)
19	Brotherhood of St Laurence
20	Confidential
21	Wilma Gallett
22	National Welfare Rights Network (NWRN)
23	Try Youth and Community Services Inc

Additional Information Received

TABLED DOCUMENTS

- Tabled by Mr Russell King, Chief Executive Officer, Waverley Action for Youth Services Inc. on 11 June 2009 in Melbourne. Copy of an email sent to Mr Kevin Rudd, Prime Minister on 2 June 2009.

APPENDIX 2

Public Hearings and Witnesses

THURSDAY, 11 JUNE 2009 – MELBOURNE

Ms Tracy Adams, Chief Executive Officer,
BoysTown

Mr Graham Carters, Deputy Secretary,
Employment and Strategic Policy, Department of Education, Employment and
Workplace Relations

Mr Peter Davidson, Senior Policy Officer,
Australian Council of Social Services

Ms Dianne Fletcher, Group Manager,
Employment Purchasing Group, Department of Education, Employment and
Workplace Relations

Ms Annette Gill, Policy Manager,
National Employment Services Association

Ms Malisa Golightly, Deputy Secretary,
Department of Education, Employment and Workplace Relations

Mr Russell King, Chief Executive Officer,
Waverley Action for Youth Services Inc

Ms Karen Faye McLaughlan, Business Manager,
Waverley Action for Youth Services Inc

Mr Frank Quinlan, Executive Director,
Catholic Social Services Australia

Mr Ashley Reid, General Manager,
Mercy Employment and Training, Catholic Social Services Australia

Mr Joseph Ryan, President,
Management Committee, Waverley Action for Youth Services Inc

Mr Barry Sheehan, Director,
Centacare Toowoomba, Catholic Social Services Australia

Ms Sally Margot Sinclair, Chief Executive Officer,
National Employment Services Association

Mr David Francis Thompson, Chief Executive Officer,
Jobs Australia

