

## NESA response to the Competition Policy Review Draft Report

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**Presented by:**

Sally Sinclair, CEO  
National Employment Services Association  
Level 8, 20-22 Albert Road  
South Melbourne 3205

**Contact:**

P: (03) 9624 2300 | F: (03) 9686 3660  
E: [nesa@nesa.com.au](mailto:nesa@nesa.com.au) | W: [www.nesa.com.au](http://www.nesa.com.au)

## Introduction

NESA was established in 1997 as the peak body for Australian employment services. NESA's community, not for profit and private sector members have extensive coverage of all contracted employment services across the nation: Job Services Australia (JSA), Disability Employment Services (DES), and the Remote Jobs and Communities Programme (RJCP). Other complementary employment related programmes delivered by NESA members include the Indigenous Employment Programme (IEP), Australian Apprenticeship Centres (AAC), Group Training Organisations (GTO) and the New Enterprise Incentive Scheme (NEIS).

NESA is dedicated to the development and improvement of employment services and related programmes, to ensure that every individual who wants to participate in the world of work can do so.

NESA is pleased to have the opportunity to make a submission in response to the Competition Policy Review Draft Report. Our response focuses on the recommendations in relation to human services, and in particular seeks to provide learnings from almost 20 years of contracted out employment services.

We note the following draft recommendation in relation to Human services, and shall respond to each of the guiding principles.

### **Draft Recommendation 2 — Human services**

Australian governments should craft an intergovernmental agreement establishing choice and competition principles in the field of human services.

The guiding principles should include:

- user choice should be placed at the heart of service delivery;
- funding, regulation and service delivery should be separate;
- a diversity of providers should be encouraged, while not crowding out community and voluntary services; and
- innovation in service provision should be stimulated, while ensuring access to high-quality human services.

Each jurisdiction should develop an implementation plan founded on these principles that reflects the unique characteristics of providing human services in its jurisdiction.

## Overview – Characteristics of employment services in Australia

Key characteristics of mainstream employment services in Australia include:

- Job Seeker Servicing
- Activation and link between employment services and income support
- Quality and Compliance
- Performance Framework – Star Ratings

See Attachment A for further information about each of these characteristics.

## Comments on guiding principles of Draft Recommendation 2

### User choice should be placed at the heart of service delivery

Choice is a feature of the employment services framework. NESAs supports user choice and believes job seekers should have a say in their service delivery. Job seekers can exercise choice in the provider they select for the programme for which they are eligible, within market share rules.

Currently, Connections for Quality provides information about the services offered by Job Services Australia (JSA) and Disability Employment Services (DES) providers. This information is to help job seekers make an informed choice of provider. However choice of providers has traditionally proved to be largely based on location of providers, with proximity to Centrelink a key factor of choice.

During the service period job seekers can also exercise choice and request a transfer if they feel they can access better services from a different provider of the same programme.

Offering different programmes such as Job Services Australia and Disability Employment Services is essential to ensuring the distinct needs of different job seeker cohorts are properly addressed. We note that a significant number of providers with contracts for both Job Services Australia and DES – Disability Management Services have trialled integrated service models. Providers report they have generally disbanded such integrated service models as despite the similarity of some characteristics on paper, in reality these job seeker groups present quite differently.

A central strength of the Australian model since inception has been the diversity of the provider network. Diversity of providers is an important element of consumer choice. However over recent years, there has been a consolidation of the employment services industry. As discussed below, NESAs is concerned that further reducing the diversity of providers will limit user choice.

### Funding, regulation and service delivery should be separate

The OECD credits Australia's activation policy and participation programmes as positively contributing to the country maintaining one of the lowest levels of unemployment in the G7 and G20 nations.<sup>1</sup>

NESAs has consistently supported the contracted employment system introduced in 1998 by the Howard Government, as our members believe it has on the whole worked well. The Job Network

was a new and evolving way of attempting to reduce unemployment by bringing flexibility, choice and competition to the provision of employment services.<sup>ii</sup> Competition between providers and the use of outcome payments created improved efficiency and better outcomes.<sup>iii</sup>

Further major reforms to the framework introduced in 2000 led to a sharp increase in employment outcomes.<sup>iv</sup> Later amendments to contracted employment services led to greater tailoring of employment services for highly disadvantaged groups. Australia is now one of the most advanced and best evaluated contracting models in the world.

Drawing from NESAs experience of the contracting out of employment services, we have identified the following purchasing principles for successful procurement:

- Service – effective high quality and high performing employment and related services for individuals, communities, workplaces and the broader economy.
- Stability – minimise disruption in local labour markets; enable high quality responses through transparent purchasing arrangements; purchasing criteria to value demonstrated performance.
- Simplicity: Ensure that the framework is unencumbered by excessive administration and red tape and is outcome rather than process focused.
- Sustainability: Resources to deliver on outcome objectives across the life of the contract and enable the viability of the sector. Support the efficient management of services and organisations through the provision of high level modelling data at the point of purchasing and throughout the life of the contract.

There has been ongoing interest and discussion about the application of a licencing model in employment services to replace the current purchasing arrangements through competitive tendering processes.

There are various licencing models in use across a diverse range of product and service areas. The purchaser will construct licencing models to ensure they meet their objectives and priorities and each has different levels of regulation, accountability and monitoring frameworks. In establishing a licencing model the purchaser will set the criteria for who may qualify as a licensee, the specific procedure for issuing licences and regulatory and monitoring processes to be applied to the management of licences. This will generally include terms and conditions of the licence and cover provisions such as rights conferred by the licence, rights of the regulator, the process to amend the terms of the licence, transferability of the licence, disqualification of a licensee and renewal requirements.

There are a number of examples of models of licensing within Australian industries. Most often cited with particular relevance to employment services are aged care, childcare and the training industry. While these are mooted as models to review and compare when looking at how licensing could be applied to the employment services framework, there is one key difference between our market and those in which truly free market principles have been applied – and that is the fact that we operate in a uniquely managed market environment.

Employment services are intrinsically linked in to welfare payments for the majority of participants. Government has a legislated requirement<sup>v</sup> to provide access to support and activities that assist job seekers in meeting their mutual obligation. There is a finite number of participants in the market at any one time – yet they cover the breadth of the nation. Services need to be available no matter where a job seeker is located.

The aged care market offers a prime example of the limitations a licensing model can present in terms of providing adequate service coverage. A 2009 Senate committee found that rural people face 'problems with accessing appropriate aged care services'<sup>vi</sup> due to reasons such as higher operating and capital costs, dispersed populations, travel and distance impacts and workforce shortages which limit service availability and viability.

#### A diversity of providers should be encouraged, while not crowding out community and voluntary services

A central strength of the Australian model since inception has been the diversity of the provider network. Diversity is critical to job seeker and employer choice, and provides for the creation of specialist expertise to be targeted to individual cohorts. NESAs also believe that providers should be able to opt in to be specialist only, generalist, or specialist accepting generalist flow – allowing for the widest flexibility of business models to suit the areas in which providers operate.

In recent years there has been a consolidation of providers in employment services. NESAs members are concerned about the viability of the financial model of Employment Provider Services 2015-2020, and expect there to be cash flow issues. The model is likely to be most attractive to those organisations that have the capital available to make a loss in particular areas, or who are willing to take risks and can afford to make losses early on. NESAs therefore believe that diversity is at risk in the new arrangements for Employment Provider Services 2015-2020.

#### Innovation in service provision should be stimulated, while ensuring access to high-quality human services

The introduction of a competitive market framework increased the overall performance and level of outcomes achieved by the employment services industry.<sup>vii</sup> We believe that those principles currently in place provide a framework for an efficient and responsive employment services system that delivers good value for money. However over time, performance and innovation within the sector have been hindered due to the complexity and transactional nature of policy requirements<sup>viii</sup>

Innovation can best be fostered in a flexible and low prescription environment. It is very welcome that the policy intent outlined in the Employment Provider Services 2015-2020 Request For Tender includes a reduced level of prescription, complexity and red tape for employment services providers. It is important for the provision of employment services into the future, that this is also the case in practice. A risk based approach to managing compliance would support this objective.

### Job Seeker servicing

One of the characteristics of mainstream employment services provision is the streaming of job seekers, which makes higher outcome fees available for assisting harder to help job seekers.

There has long been an emphasis on outcomes in employment services. However in the 2015 model, there is a strengthened focus on outcomes and longer term (26 week) outcomes payments. For a 26 week outcome the range of payment is between \$3400 (Stream A) and \$11,000 (Stream C: hardest to place).

At present, there are 124 Employment Service Areas (ESAs). NESA has long advocated about the importance of a local focus within contracts. The ESA model has facilitated localised and flexible workforce solutions that meet the needs of local areas, employers and job seekers. However in the new Employment Provider Services contracts commencing 1 July 2015, there will be 51 Employment Regions.

Under the current model, the Employment Pathway Fund (EPF) provides a pool of funding to support the reconnection of job seekers to employment. The two highest areas of expenditure under the current EPF are training and wage subsidies. The new Employment Fund structure to be introduced in 2015 is comprised of a General Account and a Wage Subsidy Account, and provides reduced scope for activities that can be funded compared to the EPF.

### Activation and link between employment services and income support

Australia's activation model requires that income support is conditional on participation, job search, and minimum hours of participation requirements. The Department of Human Services is responsible for administration of income support and determination of income support sanctions for non-compliance.

DHS is also responsible for administering the Job Seeker Classification Instrument (JSCI) to determine likelihood of remaining unemployed, including education, country of origin, age and disability. This triggers a further assessment for some to determine hours of work capacity, and for some, potential referral to Disability Employment Services and/or eligibility for the Disability Support Pension.

The current JSCI tool is based on an assessment of relative disadvantage and is not an absolute assessment tool. This means that while the impact of barriers on the individual and their ability to engage in work may be significant, the tool will only assess how this might relate to others in the programme, which is skewed by the higher number of job seekers with significant barriers to employment now participating in services. It is also a tool which is initially often conducted by phone when the job seeker first applies for payment and therefore may not be comfortable divulging intimate details of possible barriers to employment. Once these barriers come to light during the course of servicing by the provider, the JSCI setting and policy surrounding review of job seeker circumstances make it very hard to achieve greater service support for the job seeker – even when evidence supports the existence of significant barriers to employment.

Previous reviews of the JSCI have recommended greater input from providers, a longer period of time to collect evidence and conduct assessments, and better alignment of assessment outcomes to individual job seeker needs. NESAs continue to agree with these recommendations

### Quality and Compliance

NESA members recognise the need to ensure quality in Employment Services. However it is important to ensure that quality is not confused with compliance, and that quality is about supporting continuous improvement and business excellence. Red tape can be further significantly reduced by moving to an approach to contract management that is focussing on ensuring that providers have accredited quality systems rather than a focus on compliance or ‘catching providers doing the wrong thing’.

It is important to ensure that there is little or no duplication between measures in the Quality Assurance Framework (QAF) and Quality Standards. Ideally, having the right Quality Standards in place should avoid the need for any duplication.

If Government does require both adherence to one of the four identified quality standards and the QAF, it is important that Employment Providers are made aware of how the different quality standards relate back to the QAF and have a clear sense of any gaps that will need to be filled to meet the QAF requirements. Further, where a Quality Standard is well aligned to the Department’s QAF Principle, meeting the Quality Standard should equate to meeting the requirements of the QAF Principle.

### Performance Framework

The Star Ratings system is at the heart of the employment services performance framework. Business reallocation and purchasing processes are heavily linked to the performance framework and particularly the Star Ratings.

The Star Ratings system has been iteratively developed over many years and contracts. In 2009, it was considered a major improvement to the methodology to remove forced distribution and adopt a measurement that provided ratings based on the distance from the mean. Unfortunately, as is the nature of relative benchmarking models, as performance improvements are seen across the board we have seen more and more providers cluster around the mean and therefore substantial growth of three star performance.

While this is not necessarily problematic from a performance perspective if the average performance continues to improve – as this is not information that is provided to those external to the sector, it can create undesirable perceptions about providers and overall programme performance. Under this arrangement it is possible for all providers to succeed, however in doing so they are all deemed ‘average’. Conversely, it is possible for all providers to underperform, and for this performance to then become “average” and acceptable.

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<sup>i</sup> Organisation for Economic Cooperation and Development (2012) *Activating Jobseekers – How Australia Does it*, OECD, Paris, cited in DEEWR, (2013), *Employment Services – Building on Success*, Issues Paper, p. 8, Department of Employment, Canberra

<sup>ii</sup> Productivity Commission (2002) *Independent Review of the Job Network*, Report No. 21, AusInfo, Canberra

<sup>iii</sup> *ibid*

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- <sup>iv</sup> Grubb, D. (2006) Australia's quasi-market delivery of case management, International Social Security Association - International Experts Workshop of the ISSA Technical Commission on Unemployment Insurance and Employment Maintenance, Brussels, Belgium, 10-11 April 2006
- <sup>v</sup> Social Security Act 1991 <http://www.comlaw.gov.au/Details/C2013C00660>
- <sup>vi</sup> Commonwealth of Australia 2009, *The Senate Standing Committee on Finance and Public Administration Inquiry into Residential and Community Aged Care Report April 2009*, Canberra
- <sup>vii</sup> Productivity Commission 2002, *Independent Review of the Job Network*, Report No. 21, AusInfo, Canberra
- <sup>viii</sup> NESA 2012, Response to the Advisory Panel on Employment Services Administration and Accountability Discussion Paper, Melbourne