



Submission by the Commonwealth Ombudsman

DISCUSSION PAPER ON FUTURE PURCHASING OF EMPLOYMENT SERVICES – THE MID TERM BUSINESS REALLOCATION

Submission by Mr Ron Brent
Acting Commonwealth Ombudsman
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INTRODUCTION AND SUMMARY

The Ombudsman welcomes the Government's examination of the processes by which the performance of Job Services Australia (JSA) service providers will be assessed, and business potentially reallocated, as the midpoint of their three year contracts approaches. JSAs have a vital role in supporting efficient, effective and quality outcomes for Australian jobseekers. The Department of Employment, Education and Workplace Relations (DEEWR) has an equally important role in providing timely and targeted support to JSAs whose performance is substandard, and where their performance does not subsequently meet expectations, in taking decisive action to protect the interests of jobseekers, employers, and Government.

The Ombudsman has a role in safeguarding the interests of each of these stakeholders as they interact within the job services arena. With increased outsourcing of roles once carried out by government agencies, it is essential that the means of monitoring performance – including in relation to procedural fairness and access to review - are robust, and corrective action is available and taken to address any shortcomings.

Job seekers and employers who deal with JSAs, and JSAs themselves in their interactions with government, must have an avenue of redress which they can call on. This capacity to complain and be heard by the Department and independent oversight bodies such as the Commonwealth Ombudsman should be well publicised. It should be noted that the Ombudsman has jurisdiction to investigate the administrative actions of contracted service providers for government agencies including JSAs.

COMMONWEALTH OMBUDSMAN BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

RESPONSE TO THE DISCUSSION PAPER

We understand that the discussion paper is primarily intended to inform the arrangements for the midterm business reallocation, and to invite initial comments on issues related to the future purchase of employment services. In its introduction the paper expresses the wish that the consultation process will also contribute to a set of principles which may be used to underpin future purchasing arrangements for employment services. The following observations are made in that context, that is, with a view to their current and future relevance to the procurement and provision of services under the JSA scheme.

The paper sets out a number of detailed questions as a possible guide to input. In our response to the Discussion Paper we have not addressed these specific questions but rather provide more general commentary on the issues.

Role of the Quality Framework

The Ombudsman welcomes the stated objective of the Performance Management Framework, that is, to foster excellence and continuous improvement through constructive feedback and through emphasis on efficiency and effectiveness. We note, however, that the Discussion Paper describes the Performance and Quality Management frameworks running in parallel. While the measures of efficiency and effectiveness which make up the Performance Management Framework are used in developing the publicly available 'star ratings' for JSAs, the results under the Quality Management Framework are not. Quality results are not available to the public, and apparently not accessible to job seekers or employers. In possible explanation of this approach, the Discussion Paper refers to the relative newness of the Quality Framework and the fact that some of the measures are still being tested. It expresses the hope that the measures will continue to evolve over the life of the current JSA contracts, 'as more data become available and adjustments are made if required'.

Given that Quality is the third KPI within the Employment Services Deed, and that the measures under the Quality Framework include the 'client experience', 'assessing services provided to participants' with underpinning measures such as complaints handling, this office would encourage a focus on their development to the point where they are sufficiently robust to be reported on an equal footing with efficiency and effectiveness.

Performance assessment under the deed

The extract from the Employment Services Deed at Appendix 1 sets out the KPIs which will be taken into account, and other performance indicators which may be taken into account, when assessing a provider's performance.

The Ombudsman welcomes this flexible approach, acknowledging that for JSAs operating with the most disadvantaged job seekers (such as those with mental illness or older persons) and in the most difficult environments (such as in remote communities), it would be inappropriate to measure the success of the employment services initiatives by focus on job placement outcomes or other short term measures. It is important to ensure that the overall performance assessment of JSAs appropriately factors in the diversity of people's circumstances and the challenges of achieving employment participation outcomes for the most disadvantaged. There is a danger that placing too much emphasis on the KPIs (set out in Employment Services Deed) could present structural disincentives for JSAs to commit to longer term approaches to finding durable solutions for disadvantaged individuals and

communities. Performance measures for JSAs predominately working with these client groups should be adjusted reflecting the appropriateness of the KPIs. However the specific 'other factors in performance assessment' that will be taken into account should be made clear to JSAs.

The role of complaint management

One of the Principles Underpinning the Charter of Contract Management is a commitment by DEEWR to work cooperatively with providers to resolve complaints 'as quickly as possible'. The Ombudsman recognises the importance of dealing with complaints promptly however an effective complaints system involves more. We suggest DEEWR promotes the principles set out in the *Better Practice Guide to Complaint Handling*¹. An effective complaints management process recognises the value of complaints as a form of feedback which can indicate problems, shortcomings and opportunities in an individual case or across a system of administration. We would hope that the analysis of complaint management results within the Quality Framework is premised on this approach, and does not act as a disincentive to providers to elicit complaints from jobseekers.

The Discussion Paper seeks comment about review processes, and notes the comments by some JSA providers that there should be scope to give feedback beyond the formal feedback process during which performance results will be discussed between the Department and the provider. The office agrees with that view, and recommends that DEEWR provide an internal review process to handle any complaints about the formal feedback process. Beyond any internal review process which may be available, the Ombudsman has clear jurisdiction in relation to complaints by JSAs about DEEWR, as it does for matters between job seekers and JSAs. We recommend that information about the option to refer complaints to the Ombudsman be made explicit in relevant information and correspondence to both Jobseekers and JSAs.

¹ Commonwealth Ombudsman, *Better Practice Guide 1*, April 2009. Available on the Commonwealth Ombudsman website at www.ombudsman.gov.au