

**SUBMISSION:
PRODUCTIVITY COMMISSION INQUIRY INTO HUMAN
SERVICES – IDENTIFYING SECTORS FOR REFORM**

July 2016

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1. INTRODUCTION

1.1 ABOUT JOBS AUSTRALIA

Jobs Australia is the national peak body for non-profit organisations that assist unemployed people to prepare for and find employment. The network helps members to make the most effective use of their resources to promote the need for services and support that will help unemployed people to participate fully in society.

We provide an independent voice for members who range from large charitable organisations to small local community-based agencies. Jobs Australia is the largest network of employment and related service providers in Australia and is funded and owned by its members.

Jobs Australia members are non-profit organisations that help unemployed people to prepare for and find employment.

Typically, Jobs Australia members do some or all of the following:

- Deliver services under Commonwealth and/or State Government funded programs, such as jobactive (including Work for the Dole), Disability Employment Services, Community Development Program (formerly the Remote Jobs and Communities Program), Skills for Education and Employment, and similar State Government programs.
- Deliver accredited or non-accredited training for unemployed people as Registered Training Organisations, Group Training Organisations, apprenticeship centres, social enterprises and other non-profit training and education institutions.
- Deliver similar employment and training services to unemployed people without any government funding.

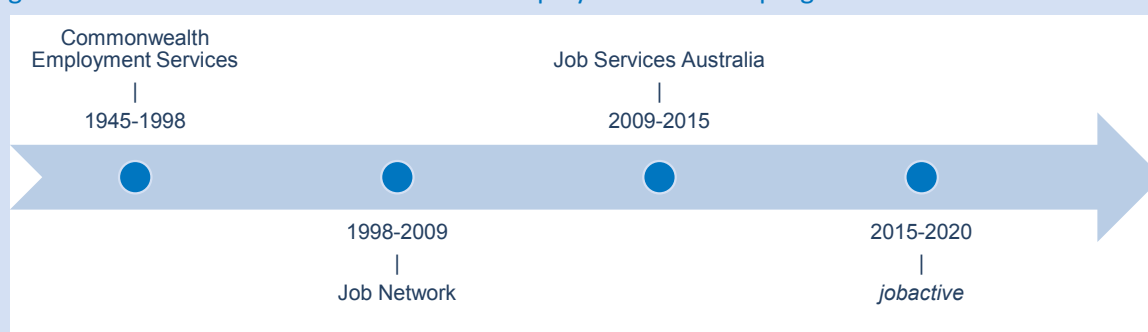
1.2 ABOUT THIS SUBMISSION

This submission will look mainly at Australia's outsourced employment services system, its potential for reform and the lessons that its 18-year history holds for any proposals for similar reforms to other human services.

2. CASE STUDY: AUSTRALIA'S OUTSOURCED EMPLOYMENT SERVICES SYSTEM

2.1 REFORM PATHWAY

Figure 1: Basic timeline of Australia's main employment services programs*



*Note: for simplicity, this diagram leaves out many smaller programs and specialist contracts, including Disability Employment Services (and its predecessors) and various programs targeted to specific cohorts.

From just after World War II up until 1998, Australia delivered a public employment service directly through a Commonwealth agency, the Commonwealth Employment Service (CES).

In the 1996 Federal Budget (the first delivered by the Howard Government), the Minister for Employment, Education, Training and Youth Affairs, Senator the Hon Amanda Vanstone, announced that the CES would be outsourced. While there had been some experimentation with outsourcing of CES services under the former Keating Government as part of its *Working Nation* package, nowhere in the world had such services been comprehensively contracted out - with contracts awarded to public, private and community sector providers through a competitive tender.

It was the nation's largest ever human services tender process, with more than 1,000 organisations competing for contracts (OECD 2012, p70). Only 300 were successful, and these included a mix of non-profit organisations as well as for-profit/commercial enterprises and a public provider known as Employment National.

There were three contract rounds under the Howard Government, with each round known as *Employment Services Contract 1, 2 and 3* respectively. The system was (and to many, still is) better known by its branding as the *Job Network*. For ESC1, tenderers were invited to compete on price as well as quality. In ESC2 competition on price was limited by a price floor (and tenderers largely submitted bids with prices at or close to the floor price). In ESC3 and in subsequent tenders, prices were specified in the Request for Tender and bidders competed only on the basis of the quality of service offering. In all tender rounds, past performance has also been a key consideration.

The Rudd Government implemented some changes to the contracts in 2009, the most significant of which was a name change to *Job Services Australia*. In 2015, the Abbott Government made other changes and re-branded the system as *jobactive*. Throughout, however, the basic structure and administrative arrangements of the system have remained constant.

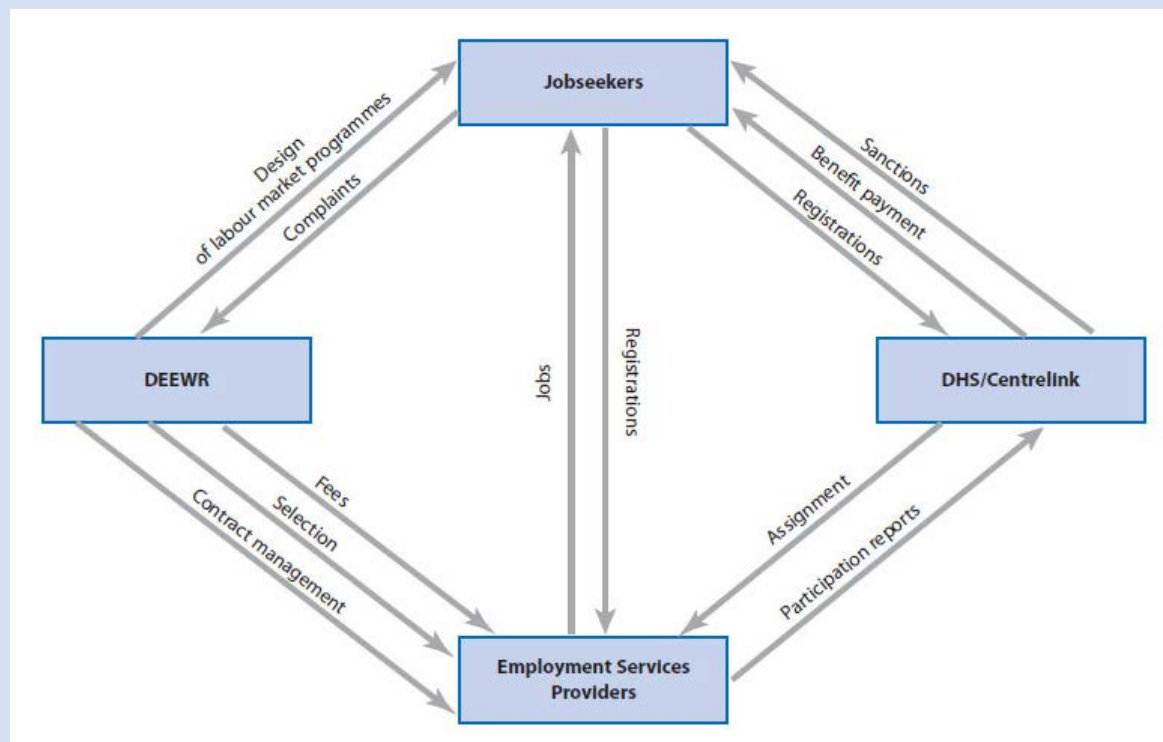
As a result, the way that competition works is largely the same today as in 1998. In summary:

- Potential providers compete for contracts via a tender process and are awarded contracts with a defined 'business share' (that is, a percentage of job seeker referrals from Centrelink) in specified geographic contract areas
- Providers compete to attract additional job seekers (providers can exceed their allocated caseload by up to 30%)
- Providers are paid for defined 'outcomes', generally a combination of short and long-term employment outcomes (such that providers that achieve higher performance receive greater payment), and more disadvantaged job seekers attract higher payments. A questionnaire known as the Job Seeker Classification Instrument (JSCI) is used to assess level of disadvantage and allocate job seekers to a 'stream', with higher streams receiving higher levels of support and higher levels of funding.
- Performance is measured via a star ratings system that compares actual outcomes achieved (and other performance indicators) against their expected performance based on a regression analysis that factors in caseload and local labour market characteristics
- At set points in the contract, the Department reallocates business share from low performing providers to high performing providers

These features mean that providers compete not only at the time of each tender but throughout the contract, so as to (i) maximise payments, (ii) avoid business share being reallocated by the Department and (iii) to increase their chances of securing subsequent contracts.

The arrangements are known as a 'quasi-market' because they mimic features of a market while maintaining a very high degree of government control and accountability. A single Department is responsible for designing policy settings, overseeing their implementation, policing the conduct of providers, determining the penalties for non-compliance and evaluating and reporting on system performance. In contrast, many other systems for government-funded services provide for an independent regulator (eg: education and health systems).

Figure 2: Arrangements of actors in the Employment Services System



Source: OECD 2012, *Activating Job Seekers – How Australia Does It*, p66.

2.2 ISSUES WITH COMPETITION IN THE JOB NETWORK

The outsourcing of Australia's employment services system in 1998 was intended to introduce competition and user choice through a new market of 'employment placement enterprises' (EPEs):

Rather than jobseekers being referred to a specific EPE by the service delivery agency, EPEs will compete among themselves to attract jobseekers to fill their vacancies. The national vacancy database will be the prime mechanism for eligible jobseekers to identify suitable vacancies and for EPEs to attract jobseeker clients. Jobseekers will be encouraged to approach a number of EPEs for assistance in their job search efforts and to facilitate this, the agency could be authorised to provide their personal details directly to the EPEs of their choice. As far as possible it will be desirable for any given regional labour market to be serviced by a number of EPEs. This will maximise the benefits of competition and reduce the dependence of jobseekers on the performance of any single EPE in the market.

(Vanstone 1996, p37)

With an eye to history, problems with outsourced employment services would have been easy to predict. Those who look to the Bible for guidance might have noted that Matthew and Zacchaeus

were both tax collectors contracted to the Romans, in a system whereby the collector paid the Romans for the right to collect taxes and then recovered taxes largely as they saw fit, enabling them to extract extortionate profits at the expense of the poor (Noell 2007, p104).

Those more interested in Australian history, meanwhile, might note the example of the contracts under which the First Fleet, Second Fleet and Third Fleet transported convicts to Australia. For the First Fleet, the Navy Board contracted an experienced naval contractor and paid him a flat rate per month plus a daily amount to cover food and provisions for each convict. The First Fleet was a success, but it was expensive. In an effort to reduce costs, the Second Fleet was contracted to the lowest bidder in a competitive tender, who happened to be a slave trader. The contract paid at a flat rate per convict embarked, which shifted the risk of any delays to the contractor. This provided a strong incentive to get to Australia quickly, and little incentive to keep prisoners alive, and so the contractor did not stop long enough along the way to allow the convicts to recover from scurvy. About a third of them died. For the Third Fleet, the Navy Board went back to more reputable contractors and paid them a sum per passenger embarked, plus an amount for each that landed safely in Australia; surgeons were also appointed to monitor the treatment of the convicts. The Third Fleet contractor was lauded for its attention to the health of the convicts (Sturgess 2008).

The experience suggests that accountability cannot entirely be contracted out. Contract design is incredibly important, as getting it wrong can lead to perverse outcomes, with contractors behaving in ways that are consistent with their contract, but adverse to the public interest in other ways.

Similar issues quickly emerged in the Job Network. What was imagined when the reforms were designed is not what eventuated when they were implemented. In 2002, the Productivity Commission (PC) published its Independent Review of the Job Network and identified a range of issues with the way that competition and user choice were operating within the system.

Some of the issues relevant to the current inquiry that the PC identified in 2002 include:

- Lack of real user choice: rather than exercise choice as anticipated, most job seekers continued to accept a referral or, if they did exercise choice, chose a provider on the basis of the convenience of the location rather than on quality of service (PC 2002, p8.1). As a consequence, some of the fiercest competition between providers was the competition for office real estate close to the local Centrelink office.
- Perverse behaviour in the market: practices such as ‘creaming and parking’ - that is, allocating greater resources to job seekers most likely to achieve an outcome (creaming) and providing little assistance to the hardest to place (parking) (PC 2002, pp9.13-9.22); there was also evidence of ‘job-splitting’ – that is, arranging with an employer to ‘split’ one vacancy into two part-time roles so that two outcomes could be claimed (PC 2002, p12.6); and one provider was found to have claimed outcomes for employing job seekers in its own labour hire company (PC 2002, p12.6).
- Mixed evidence on quality of service: with surveys by the (then) Department of Employment and Workplace Relations (DEWR) showing more than 80% of job seekers were ‘satisfied’ or ‘very satisfied’, while evidence provided by users who participated in workshops conducted by the PC painted a less satisfactory picture (PC 2002, pp6.1-6.10).
- Poor engagement with employers: surveys data provided to the PC by DEWR and employer groups generally showed that a majority of employers who used the Job Network found the service satisfactory or better, but relatively few employers used the services (PC 2002, pp6.23-6.26).

- Too much focus on compliance: evidence provided to the PC suggested that there was a “large and increasing administrative burden”, that contract variations were one-sided, and that ongoing monitoring was extensive – with the “potential to reduce flexibility and innovation” (PC 2002, p12.12).

Notably, the Commission identified the risk that over-specification of administrative requirements could compromise the system and recommended that “licensing of providers should be adopted, ultimately with free entry to the Job Network by accredited agencies, subject to ongoing assessment of quality” (PC 2002, Overview, p XX). The Commission also recommended that Government consider “an independent Job Network agency” to address “significant problems of transparency, accountability and power imbalance between DEWR and providers” (PC 2002, 14.14).

2.3 COMPETITION IN JOB SERVICES AUSTRALIA AND TRANSITION TO *JOBACTIVE*

While there have been significant changes to the program over time, certain fundamental features of the system remain the same. Contracts are still awarded through competitive tenders, performance is still measured through Star Ratings, and the payment model still includes a mix of up-front payments and outcome-based payments.

As a result, all of the independent analyses of the system since the PC review in 2002 have identified similar problems.

Administrative complexity has consistently been found to increase over time. In June 2010, The Nous Group was engaged by Jobs Australia to advise on how best to reduce ‘red tape’ in the Job Services Australia (JSA) system as result of serious concerns being expressed by providers about very high and growing levels of red-tape and administrative compliance burdens in the system.

The Nous Group found that front-line staff in Employment Service Providers spent 50% of their time with a job seeker administration and compliance. It was identified that “close to 30% of this administration time (or 15% of overall time) [was] spent on unnecessary administration and duplicated effort with Centrelink” (Nous 2010, p9).

In 2012, and in response to the Nous Group report, the then Minister for Employment Participation, the Hon. Kate Ellis MP, appointed a panel of experts to review the administrative requirements in the Job Network’s successor, Job Services Australia. The panel, formally known as the Advisory Panel on Employment Services Administration and Accountability (APESAA), found that:

- The Department had “a tendency toward hyper-specification of administrative requirements, a culture of risk-aversion, and a practice of mitigating risk through electronic surveillance of increasing levels of data input, storage and retrieval by providers” (APESAA 2012, p21).
- “The complexity of the Programs is likely to have weakened accountability for performance and outcomes, and to have constricted innovation” (APESAA 2012, p11)
- And “establishing an accreditation scheme for providers would help ensure that services are delivered at or above a consistent standard of quality” (APESAA 2012, p28).

APESAA made a series of recommendations that were ultimately implemented in the 2015 contract, including recommendations for longer contract terms and an accreditation system for providers.

Meanwhile, an independent review into erroneous claims of a particular outcome payment, the Provider Brokered Outcome payment, found that over-claiming was widespread and possibly, in some cases, fraudulent (Butterworth 2012). In 2015, the ABC’s Four Corners also reported allegations

that a provider had been making fraudulent outcome claims under a Job Services Australia contract (Four Corners 2015).

The design of *jobactive* reflects the competing priorities that policy makers faced in the lead up to the new contract. There was evidence that administrative complexity was constraining efficiency and quality in the system, yet there was also evidence that providers would take advantage of any increase in flexibility.

In the end, the design of *jobactive* maintained the key features of the previous models but with some notable changes. These include:

- Larger contract regions and longer contracts (5 years instead of the previous 3 years) to give providers more certainty over funding.
- A simplified payment model with the number of job seeker streams reduced from 4 to 3, fewer payment types, less up-front funding and more funding attached to outcomes, which were intended to reduce complexity and give providers more flexibility.
- Accreditation requirements – but with no commensurate reduction in auditing, monitoring or other requirements, such that accreditation has led to an increase in administrative requirements rather than the reduction expected by APESAA.

Service requirements for job seekers were also increased, with the *jobactive* contract including requirements around frequency of contact with job seekers, requirements for job plans and the number of job applications that a job seeker must agree to, and providing for mandatory activities such as Work for the Dole. In the 2016-17 Budget, the Federal Government also announced a mandatory training program for all Stream A job seekers. For job seekers, the system is largely focused on monitoring compliance with increasingly specific mutual obligation requirements.

The requirements and design of the *jobactive* contracts have resulted in a significant reduction in the number of providers delivering the contract. Whereas there were around 300 providers at the start of the Job Network, there were just 44 organisations awarded *jobactive* contracts (Department of Employment 2015).

As far as competition is concerned, fewer providers means less choice for job seekers and the highly specified requirements mean the system that remains highly constrained and unresponsive to the needs of its users.

2.4 AN ALTERNATIVE

In the lead up to the end of the Job Services Australia contract, Jobs Australia developed the idea first proposed by the Productivity Commission of a licensing-based system for employment services. Jobs Australia's *Blueprint for Reform* proposed licensing for providers, market entry (and exit) at any time, removal of allocated caseload share, and putting a portion of funding in the hands of the job seekers. We also proposed that some functions currently performed by the Department be transferred to an independent regulator.

The model is fully explained in our report, which is available here: [https://www.ja.com.au/sites/default/files/jal04 - blueprint for a better system final.pdf](https://www.ja.com.au/sites/default/files/jal04_-_blueprint_for_a_better_system_final.pdf)

The following extract provides a summary of the key features.

4.1 A MODERN EMPLOYMENT SERVICES APPROACH

Providing a system that gives the clients real choice is the key to unlocking the potential of competition and driving improvement to services. The new licensing architecture provides the opportunity to unlock competition by providing more choice for clients (both job seekers and employers) and allowing the market to reward the best approaches.

We therefore propose an accreditation-based licensing model, with the following key features:

1. Independent accreditation of providers by a regulator for employment services: To be able to deliver employment services each provider would be required to obtain a licence to operate. Providers would gain a licence through accreditation from an independent regulator on the condition they met certain criteria.
2. Both generalist and specialist licences: Providers should be able to seek a generalist license (committing to service all job seeker cohorts) or a specialist license (committing to service a particular cohort), but providers may otherwise specialise in whatever way they choose. This allows a diversity of approaches, both specialist and generalist. Note that certain specialisations will still require a generalist license – for example, a provider that specialises in a certain industry will need a generalist license, as they are not specialising by reference to a discernible job seeker cohort. A youth specialist, however, could seek a license restricted to job seekers below a certain age.
3. Licenses would be granted at the level of an established service area or region: Providers would require a licence to operate in each employment services area or region. The configuration of these geographic regions is something that should be further explored. If the number of regions is low, then providers will have to service very large areas, which would tend to favour larger providers and create a barrier to new entrants.
4. Minimum service standards and financial position required for licence: The standard for licensing should be focussed on organisational health, governance and management arrangements, financial stability and internal accountability. The licence would also require some contracting provisions such as a Code of Conduct. The standards would be developed by DEEWR in consultation with the sector.
5. Licenses do not include any ceilings on caseload: Caseload would be contestable under such arrangements. This means there would be no need for contracts and no allocated 'market share' or caseloads. Rather, the caseload of each provider will depend on their ability to attract job seekers and place them into jobs. This enhances competition by allowing new providers to seek accreditation and enter the market at any time (rather than only in tender rounds) and ensures that success in the market depends on performance.
6. Licences would be automatically renewed: Subject to the achievement of performance standards, licenses would be automatically renewed. Broadly, to retain a licence, providers would need to:
 - a. Maintain their caseload above a small, minimum threshold number of job seekers
 - b. Maintain their performance, measured by reference to outcomes via the star ratings system, above a minimum threshold (e.g. above 2 stars)
 - c. Adhere to a set of minimum service standards

- d. Stay within other rules (evidentiary requirements, prohibitions against repugnant provider behaviour).

This ensures that the Regulator has the powers it needs to ensure the integrity of the system. The minimum caseload allows for the removal of services that become too small for the Regulator to efficiently ensure compliance, but the threshold should be low so that there is room in the market for small providers of niche or specialist services.

Service standards should specify a minimum frequency of face-to-face contact with clients, minimum requirements for physical premises and other minimum conditions for a basic level of servicing, but leave room for providers to compete on service level and quality.

This requires the implementation of particular measures of performance, which may or may not be achieved through the Star Ratings system. Naturally, providers may choose to hand back their licences for normal business reasons.

7. Only the Regulator could revoke a licence: The Regulator would have the task of administering the system, including the revocation of licenses. It would do so in accordance with the rules set in legislation and regulations. There would be no discretion exercised and the decisions by the Independent Regulator would be free of any perception of undue influence.
8. The cost of licences would be very low and not a barrier to entry: Providers wishing to apply for a licence would pay a small fee to cover the administration charges associated with its processing.
9. Accompanied by audit procedures: All providers would be subject to audit by the independent Regulator. Providers would be randomly selected for audit as well as targeted based on poor performance. As we outline further, we strongly recommend a risk-based quality assurance framework.

Jobs Australia remains of the view that such a system would better align incentives in the system to enable competition to drive innovation, effectiveness and efficiency. We would encourage the Commission to look closely at *jobactive*, both for opportunities to improve the employment services system and also for the lessons that it offers in respect of other human services systems.

2.5 DISABILITY EMPLOYMENT SERVICES

As the Commission will be aware, the Department of Social Services is currently reviewing the design of Disability Employment Services and some of the ideas that the Department has floated are quite similar to the Jobs Australia Blueprint proposals. In some respects, DSS went further than Jobs Australia by proposing that employment services be disaggregated, such that employment plans, case management, job placement services and post-placement support services would be able to be purchased separately by job seekers. We have argued against that proposal on the basis that it complicates outcome payments and performance measurement, since it is impossible to know which specific service that an employment outcome is truly attributable to.

More information is available here: <https://www.ja.com.au/policy-advocacy/publications/supplementary-response-dss-disability-employment-framework-discussion-p>

Given that this reform process is still on foot, we recommend that the Commission avoid duplicating the work being undertaken by DSS and instead simply note these developments and the views of stakeholders engaged in that process.

2.6 REMOTE EMPLOYMENT SERVICES

The Commission may also be interested in examining the remote employment services program, which is now known as the Community Development Program (CDP). That program was implemented in July 2015 but was not the subject of a competitive tender – it was a case of reform by contract variation, albeit a variation in which every term of the contract changed.

The previous contract, known as the Remote Jobs and Community Program, was the subject of a tender process in 2012. In contrast to the competitive model that operates in non-remote areas, the RJCP contract and its replacement, CDP, are a single-provider model. The contracts are contestable, in the sense that they were originally awarded by tender, and Government has the ability to terminate a provider for poor performance and bring in a new contractor, but in other respects the contract is essentially a time-limited monopoly over services in each contract area.

The key feature of CDP is Work for the Dole, and the requirements are more onerous than in non-remote areas. In *jobactive* Work for the Dole requirements generally apply after 12 months of services, the requirement is usually for 15 hours per week for six months. In CDP, participants are required to undertake Work for the Dole for 25 hours per week all year round, and the requirement applies immediately on commencement of income support. Participants have predictably found the more onerous requirements difficult to comply with, and the rate of income support penalties in CDP vastly exceeds the rate in *jobactive*: for the six-month period from July to December last year, there were 50 penalties per 1,000 participants in *jobactive*, and 1,400 penalties per 1,000 participants in CDP.

The notion of competition and user choice in such a system is completely foreign. That said, it is somewhat doubtful that competition would be viable in remote areas. Many of the communities in which CDP operates are very small and very remote, often only accessible in the dry season.

The Commission may nonetheless wish to examine the unusual procurement process for CDP and the extent to which the current system is contestable and responsive to the needs of its users.

3. CONCLUSIONS

This submission has sought to highlight constraints on competition in employment services. In Jobs Australia's view, the existing *jobactive* system has the potential for significant improvement through the introduction of greater competition and user choice. It is also worth noting that the employment services system has lessons for any similar reforms to other human services – in particular, the experience shows that competition drives behaviour in ways that may not have been anticipated at the outset. That includes both the behaviour of the providers and the behaviour of the stewards of the system in government.

To that end, we note that the Competition Policy Review Final Report included some words of caution in its own conclusions, pointing out that:

“Governments cannot distance themselves from the quality of human services delivered to Australians — they will continue to have an important role as market stewards in human services sectors, including through policy and funding decisions.

In undertaking their stewardship role, governments should:

- foster a diverse range of service models that best meet the needs of individuals and the broader community;
- co-design markets with human services providers to build on the trust and relationships that already exist between service providers and users;
- separate their interest in policy (including funding) and regulation from provision;
- vest rule-making and regulation with a body independent of government’s policy (including funding) role;
- allow funding to follow people’s choices; and
- fund community service obligations in a transparent and contestable manner.”
(Competition Policy Review, Final Report, 2015, p229)

These are sound conclusions, and Jobs Australia recommends that the Commission proceed with caution in developing its proposals.

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