

State of Play: Jobactive Employment Services 2015-2020 Tender Results

1. BACKGROUND

The [outcomes of the tender](#) for new Employment Services contracts were [announced](#) on Tuesday, 31 March 2015. The new services, which are to be called *jobactive*, replace the existing Job Services Australia (JSA) contracts and will run from 1 July 2015 to 30 June 2020.

The announcement marks the conclusion of a process that began as far back as 2012, when the then Department of Education, Employment and Workplace Relations published its first 'issues paper', seeking feedback and ideas to improve JSA.

Following the 2013 Federal Election, the new Assistant Minister for Employment, the Hon. Luke Hartsuyker MP, held a series of informal, invitation-only round-table discussions seeking further feedback from some stakeholders.

The Minister also attended the 2013 Jobs Australia National Conference, where we presented our own proposals from our [Blueprint for the Future](#), and attended various other forums and meetings with Jobs Australia and its members.

The new model was revealed with the publication of an Exposure Draft Request for Tender on 28 July 2014, followed by the final Request for Tender on 7 October, 2014.

Key facts and figures

	JSA	jobactive
Provider orgs	79	44
NFP share (approx.)	70%	55%
Contract regions	110	51
Sites	1,889	1,719
Term	2 x 3 yrs	5 yrs
% of funds up-front	65%	40%
% of funds in outcomes	35%	60%

Chart 1: How the new 'market' looks

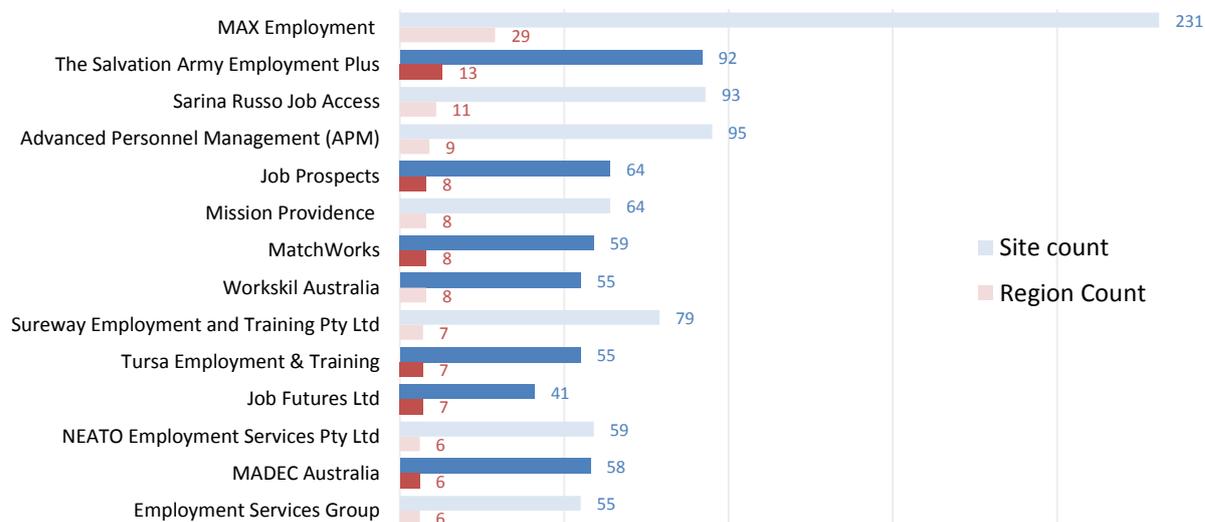


Chart shows site and region counts for the 14 providers that won contracts in more than 5 regions. Darker bars have been used for non-profit organisations.

2. KEY THEMES AND TRENDS

There is now a significant history of contracted out employment services in Australia, starting with contracted-out case management services under the Keating Government's *Working Nation* package (mid 1990s), through the three iterations of the Job Network (1998-2009), followed by the JSA years (2009-present) and bringing us to the new *jobactive* model (2015-2020). Many trends can be observed over this time. Some of the main ones are summarised below.

2.1 CONSOLIDATION OF PROVIDERS

The number of providers has consolidated from around 300 at the beginning of the Job Network (1998), to around 100 at the start of JSA (2009), to around 80 at the end of 2014 and now down to 44 (possibly fewer, if some reject their offers) for *jobactive*. This could be said to be a consequence of other trends described in this section.

2.2 SHIFT OF RISK TO PROVIDERS

There has been a trend away from fee-for-service arrangements in favour of outcome-based payment models. The new *jobactive* model shifts the payment model further towards outcomes: under JSA, only around 1/3 of the total funding was contingent on outcomes, whereas the *jobactive* funding model appears to make something like 50-60% of the funding contingent on achieving outcomes.

By shifting the payment model towards outcomes, the Government is shifting more of the financial risk onto providers.

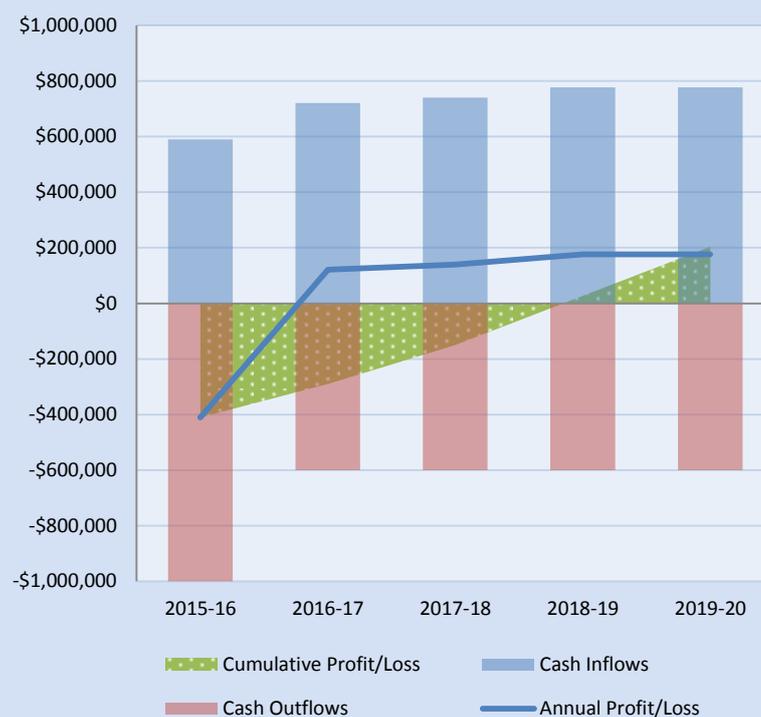
2.3 LESS MONEY

Associated with the shift of risk (above) and the drive for increased accountability (see below), the financial arrangements have tightened over time. While the cost of delivering the services always increases (broadly in line with inflation), extra administrative requirements add extra back-of-house costs and the price that Government pays for services has only ever stayed the same or been reduced. We estimate that the overall funding in

Financial risk in the new model

The following chart illustrates some of the risk in the new model.

Chart 2: five year cash flow (hypothetical)



The chart shows a hypothetical example, generated with Jobs Australia's *Cash Flow Calculator*, with significant investment in year 1 of the contract, followed by four years of stable costs. The income assumptions are a caseload of 1,000 job seekers per year; with 50% of those obtaining employment; 50% of job places leading to a 4 week outcome; 50% of those leading to a 12 week outcome; and 50% of those leading to a 26 week outcome. These assumptions are purely hypothetical. The *Cash Flow Calculator* multiplies out the fee model based on these assumptions to generate the chart.

The chart shows how the income generated by outcome payments winds up over time. This example starts generating an annual profit in year 2 of the contract – but it is not until year 4 that the provider would recover the up-front investment from year 1.

The projections would obviously be affected by any of the following:

- A business reallocation (scheduled for 18 months and 36 months)
- An economic downturn or local labour market shift
- A shift in costs
- Contract variations / guideline changes that affect costs or income (increases in 'red tape' etc)
- Problems with a partner organisation or subcontractor

the *jobactive* model has been reduced by 10% to 15% compared to JSA.

2.4 ACCOUNTABILITY / RED TAPE AND FLEXIBILITY

The employment services contracts have always contained a complex mix of incentives, and, unfortunately, some providers have, in the past, responded to those incentives by seeking to game the contracts. Scandals have been widely reported in the media, and governments have been embarrassed and pressured to respond with increased accountability measures. The consequence has been ever-increasing administrative requirements (with some notable but small attempts to [reduce administrative burden](#) from time to time – largely in response to [industry pressure](#)).

Accountability is a good thing, but it comes with a down-side: the more prescriptive the requirements are, the less flexibility there is for providers and the less opportunity there is for the providers to do things substantially differently from one another. This limits scope for innovation and reduces choice for job seekers and employers.

The *jobactive* tender arrangements attempted to partially rectify this by allowing providers to propose different service models, within the boundaries of the minimum service requirements. However, the new model also reduces the proportion of funds that can be used flexibly, limits funding for training, includes very specific Mutual Obligation requirements and relies heavily on Work for the Dole.

2.5 MORE OF THE GOVERNMENT'S ROLE OUTSOURCED

Over time, more functions that have traditionally been performed by public servants have been transferred to providers. The *jobactive* model continues this trend by encouraging lead and sub-contracting arrangements (in which the lead contractor manages sub-contractors instead of the Department) and requires providers to take on a greater role with respect to benefit sanctions (functions previously performed by Centrelink staff).

2.6 LOSS OF NON-PROFIT CHARACTER AND MISSION DRIFT

The non-profit difference used to be explained as a closer connectedness with local communities and a greater responsiveness to their needs - in contrast with the centralised, top-down bureaucracies associated with government and large corporations. Indeed, this is one of the key justifications for outsourcing government programmes –

it results in decisions being made closer to the communities that benefit from the services.

However, it has become harder, over time, for small, grass-roots community organisations to participate in the employment services system. The programme design has favoured efficiency of scale over flexibility and bottom-up innovation. Non-profit providers have responded by partnering, entering into consortia or through mergers and takeovers. At the same time, there has been a push for the sector to professionalise and become more corporate (and more accountable) in their management style; and, in competing with for-profits, non-profits have adopted similar practices and approaches to delivery of the contract.

In the latest procurement, the Federal Government chose to set the settings strongly in favour of scale and to encourage partnerships. Many of the partnerships that have been formed involve non-profits and for-profits working together. That is the right thing for those organisations to do, but it may also contribute to the ongoing dilution of the not-for-profit difference in the system.

3. THE PROCUREMENT - FAQs

3.1 WAS IT FAIR?

In many ways it is likely to have been fair; in some other ways, it is hard to say. It should also be remembered that a fair process can still result in unfair outcomes.

Technically, however, all Federal Government procurements must comply with the [Commonwealth Procurement Rules](#); and the tenders must be assessed according to the criteria set out in the Request for Tender. Politicians are expressly precluded from influencing procurements – and both the public service and Ministers take great care to avoid any actual or perceived interference.

It could be argued, however, that the [tender requirements](#) were always going to be easier for some organisations to meet than others. For example, the increased scale and more outcome-focused payment model favoured larger organisations with access to capital to invest in the first year(s) of the contract. Smaller organisations, or those with less reserves or access to loan funds, were encouraged to enter collaborative arrangements to meet the new requirements, but there was very little time available to them to identify suitable partners, conduct due diligence and negotiate agreements.

Moreover, tenders are confidential and we will never know how specific tenders were scored. Individual organisations can seek feedback on their own tender (by contacting the Department before the end of the month) but they will not be able to compare themselves with others.

3.2 HOW DOES THE NEW MARKET LOOK?

The most notable feature of the tender outcomes is the astounding dominance of one provider, Max Employment.

This is illustrated in chart 1 on the front page of this document. This graphs the number of regions and sites won by the 14 providers that won business in more than five regions. A full list is available on our website.

Max Employment will now be the biggest player, with 29 regions. That is more than double the next biggest player and largest of the non-profits, the Salvation Army Employment Plus, which won business in 13 regions.

It is unclear how the procurement process resulted in one provider achieving such a dominant place in the new provider market. Inevitably, in a contract that is designed to favour scale, the biggest player will have a dominant position and will be difficult to compete with.

Some good providers have, sadly, lost significantly or been put out of business completely. These include well-established, reputable, reliable organisations. Other providers have, more happily, won additional business.

3.3 WILL THERE BE MUCH DISRUPTION?

The results inevitably mean significant disruption to services. Disruption includes:

- **Large-scale redundancies.** Some providers will have to exit altogether; some have won business in some new areas but lost business in existing areas; others have won business in their existing areas but want to hire new staff for the new contract. It will be stressful for all involved, will be costly (as entitlements must be paid out), and will affect staff morale.
- **Large scale recruitment exercises.** Many of the staff made redundant will be re-hired by new providers (but many will not). Those with the right skillsets for the new *jobactive* contract will be in high demand.
- **Offices closing, offices opening.** With providers entering and exiting in every region, many sites will be closed, equipment and office furniture will be sold off, and new offices will be fitted out in their place. Even providers that have won business in areas where they have existing sites may need new offices (bigger or smaller, based on the new market share, or they may need different locations within a region, or they may need new sites that better meet new programme requirements).
- **Issues for job seekers:** job seekers on the caseload will need to nominate their choice of a new provider before the start of the new contracts. Some may be confused about the new arrangements, some may be unhappy

about parting with their existing provider or case manager, and some may be unhappy about the new services. The transition will be difficult for job seekers, and that will mean providers will have to spend time and resources explaining the new requirements and dealing with unhappy clients.

The extent of disruption will be very large and will be very costly. We also know from previous transitions and similar experiences internationally that performance will suffer through the transition period.

3.4 WILL THERE BE AN INQUIRY?

The Senate has initiated inquiries into previous procurements, [including the last procurement in 2009](#). Many providers have relationships with their local politicians, and politicians tend to hear (frequently) from disgruntled job seekers. There is also, typically, a degree of political interest in these kinds of procurements and there is particular interest in employment services because the complete outsourcing of employment services was (and still is) such a radical departure from traditional public service delivery of social services. Predicting the behaviour and decision-making of politicians can be fraught, but we believe that there is a strong likelihood that opposition parties in the Senate will initiate an inquiry.

3.5 IS THERE ANOTHER WAY?

There is always an alternative. One, which Jobs Australia put to the Assistant Minister for Employment shortly after the 2013 election, is to issue licenses to existing providers and then have them compete on actual performance, rather than competing through tenders. The proposal, which we called our [Blueprint for the Future](#), was not perfect and would have required further development by Government, but it was a solid attempt at designing a different way of doing things which would be fairer, more flexible and less disruptive. It is also consistent with previous recommendations from the [Productivity Commission](#), a [Senate inquiry](#), and the recent [Competition Policy Review](#) (amongst others).

4. ADVICE FOR WINNERS AND LOSERS

If you won a contract – congratulations! If you were not so lucky, our thoughts are with you and your staff as you go through a difficult change of circumstances. No matter what your organisation's situation is, there will be a range of challenges that you *will now face*. *Jobs Australia has a range of resources and services* to help support you.

4.1 RESILIENCE FOR LEADERS

One of the inevitable consequences of the competitive purchasing of community services in Australia is that some organisations are successful and secure new contracts and others are unsuccessful and either secure smaller contracts or no contracts at all. Once they become aware of the outcomes of procurement processes, leaders in community services organisations are sometimes called upon to make difficult decisions to reduce the number of their employees by making staff redundant.

This can be a stressful and difficult time for CEOs, managers, Board members and their staff, as people work to provide for their families and their futures, and deal with changes that are often beyond their control.

This can cause health problems, both physical and mental, that need to be dealt with so that those affected are able to manage any negative impacts.

Jobs Australia has produced [resources on resilience for leaders](#) to help them understand and deal with these effects.

4.2 HUMAN RESOURCES / INDUSTRIAL RELATIONS ISSUES

Whether you have won business or lost business, you need to be on top of your industrial relations obligations. In some cases, providers will seek to re-hire staff from an exiting provider – a situation which may constitute a [transfer of employment](#). If so, there will be implications for staff entitlements and recognition of prior service. Jobs Australia's [HR and IR advisers](#) are available to help and we have a number of resources on our website. Be sure to seek advice early – it is always easier to prevent problems than to rectify them.

5. ADVICE FOR WINNERS

The following challenges apply to organisations that have won *jobactive* tenders.

5.1 UNDERSTANDING THE NEW (DRAFT) DEED

A new [draft deed](#) is available and Jobs Australia has published its [initial comments](#) on the key changes – many of which cause us a degree of concern. We are also seeking more detailed legal advice, which we will share with members as soon as it becomes available. As the advice will be general in nature, you should still take your own steps to ensure that you fully understand your rights and obligations under the proposed deed.

Furthermore, as a matter of good governance, we suggest that Boards undertake a review of their legal obligations and risks arising from the Deed before they execute it. Boards should also include regular reviews of risk and compliance with the Deed as a part of their governance programs and calendars.

5.2 DOES YOUR INSURANCE MEET REQUIREMENTS?

There are new [insurance requirements](#) in the draft *jobactive* deed. If you have won business in the tender, then you will need to make sure you have the right insurance cover. Jobs Australia's [blanket cover insurance](#) is tailored to the needs of community sector organisations and designed to meet the Department's requirements. It also happens to be priced very competitively.

5.3 OTHER ASSISTANCE

Our Policy Team is monitoring developments very closely. Further advice, analysis of the new programme and its requirements, and other resources produced by our Policy Team are available on the [website](#).

6. RESOURCES AND LINKS:

- Tender results: <https://docs.employment.gov.au/node/34721>
- ES2015-2020 Request for Tender: <https://employment.gov.au/employment-services-2015-2020-rft-information>
- Department of Employment Procurement Information: <https://www.employment.gov.au/employment-services-procurement-information>
- Department of Employment *jobactive* page: <https://www.employment.gov.au/jobactive>
- Commonwealth Procurement Rules: <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/>
- Jobs Australia's Blueprint for the Future: <http://ja.com.au/2015/blueprint>
- Senate Inquiry into the JSA procurement: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2008-10/employment_services/index
- Productivity Commission review of the Job Network: <http://www.pc.gov.au/inquiries/completed/job-network>

- Competition Policy Review:
<http://competitionpolicyreview.gov.au/final-report/>
- Jobs Australia Blanket Cover Insurance:
<http://blanketcover.com.au/>
- Jobs Australia's Community Sector Industrial Relations:
<http://ja.com.au/csir>
- Resilience for Leaders: <http://ja.com.au/news/guide-leaders-resilience-during-tough-times>