

RESPONSE TO THE NEW EMPLOYMENT SERVICES MODEL (NESM) LICENSING MODEL DISCUSSION PAPER

Per Capita
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About Per Capita

Per Capita is an independent progressive think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia based on fairness, shared prosperity, community and social justice.

Our research is rigorous, evidence-based and long-term in its outlook. We consider the national challenges of the next decade rather than the next election cycle. We ask original questions and offer fresh solutions, drawing on new thinking in social science, economics and public policy.

Introduction

Per Capita has engaged in public policy analysis of the employment services system for over 10 years. This analysis has been informed by relationships with a range of public policy agencies, advocacy organisations and academics. As such, our analysis of the New Employment Services Licensing model is informed by lessons drawn from more than 20 years of collective research and expertise. This submission is particularly informed by Jobs Australia's *Blueprint for a Better System*¹ and the University of Melbourne's analysis of the problems of the privatised employment services system².

The design of the employment services market fundamentally drives the quality of the services provided, on behalf of the government, to unemployed people and to employers. Although the licensing model represents a significant change to the existing marketised approach, its potential is hindered by design flaws, that if unaddressed, will most likely lead to further market consolidation and the loss of small and specialist providers.

In this submission we outline our concerns about the licensing model in relation to its ability to secure quality employment services. We note that the model appears to favour large providers with established operations across large regions of Australia. For that reason, we focus our analysis primarily on barriers to entry for smaller providers. We argue that some special measures may need to be taken to secure the participation of specialist providers in the model.

We note the absence of an Independent Regulator, Ombudsman and/or watchdog in the model despite this being a recommendation of many credible authorities on the design of the New Employment Services Model (NESM).

We argue that the licensing model should operate within a better performance framework that supports both choice and quality. We believe there should be mechanisms for performance monitoring at both agency and site level, including through the provision of feedback from both job seekers and employers.

We also note that the licensing review framework should be used for shedding providers with bad performance quickly. On proposed settings, this appears to be a very slow and awkward process that will lack transparency.

Finally, we suggest there is a need for redesign of the NESM based on the problematic nature of unemployment following the COVID economic shock.

¹ https://www.ja.com.au/sites/default/files/jal04_-_blueprint_for_a_better_system_final.pdf

² See references Considine, at al

Response to guiding questions

What would assist smaller organisations to enter the provider market?

It is important that the licensing model preserves and promotes the viability of small and local organisations as part of the National Panel. Enhanced services will be required to blend case management focussed on social support with labour market and job placement expertise. The capacity for smaller agencies with strong local connections to enter the market on realistic terms must be protected as the Government moves towards the New Employment Services Model.

We are concerned the licensing model and broader design of the NESM does not support this ambition. Per Capita's analysis suggests the licensing model advantages large providers with established market share, who have more capital to scale up and down and to withstand market shocks.

In 1998, when Australia's employment services were originally marketised, the logic that informed the outsourcing was New Public Management (NPM). The intent of New Public Management is salient to the analysis of the proposed licensing model, as well as to the design of the New Employment Services Model itself. Among the benefits anticipated from marketisation was the expectation that privatised employment services would more effectively be able to manage the complex causes of unemployment in people experiencing long term unemployment by adopting practices drawn from social work case work³. NPM promoted competition between providers, and choice for unemployed people, by establishing quasi-market mechanisms to control for quality and performance⁴.

If the number of providers with licenses on the panel in the initial round is capped at the levels indicated in the webinars (7 to 8 per region), there will not be a diverse range of providers across every Employment Region. According to the Commonwealth Procurement rules of value for money, providers will fit the profile of large, medium and small, meaning there will be a blend of each in each region. In order to provide employment region (ER) coverage and choice to job seekers and employers in all parts of the ER, it is likely the Department will choose three large providers and three medium providers plus one small provider, the last possibly as a specialist option.

The size of the Employment Regions (ERs) that providers are required to service is an obvious inhibitor for small and specialist organisations, who face prohibitive costs and risks if required to scale up and out and, if they do not, risk being out-competed by larger agencies with more capital (including venture capital).

The design of the sub-panel arrangements is also problematic. Given the enormous interest among providers in being licensed as Enhanced Services providers, there are likely to be many organisations on the sub-panel waiting to be offered a license. Sub-panelists may have to wait for a tap on shoulder for years with no means of knowing when business might become available, nor how much and where it may be located. Smaller agencies on the sub-panel would only be able to enter the market when a provider of the same scale and ER coverage had failed to maintain performance.

Therefore, it is likely that only providers already operating other services (e.g. Disability Employment Services) in those regions will be motivated to keep waiting, while other potential providers would look to develop their business elsewhere.

³ (Eardley, 1997) see references

⁴ Eg see (Considine, Lewis & Sullivan, 2011; Le Grand & Bartlett, 1993).

The design of the NESM and diversity of providers

The design of the NESM does not support the viability of small organisations. The evolution of the current *jobactive* market illustrates how diversity has been eroded over time. Figure 1 shows the decline in overall numbers of providers since 1998: when the Job Network began there were over 300 providers, but the number of providers had declined to 44 by 2015.

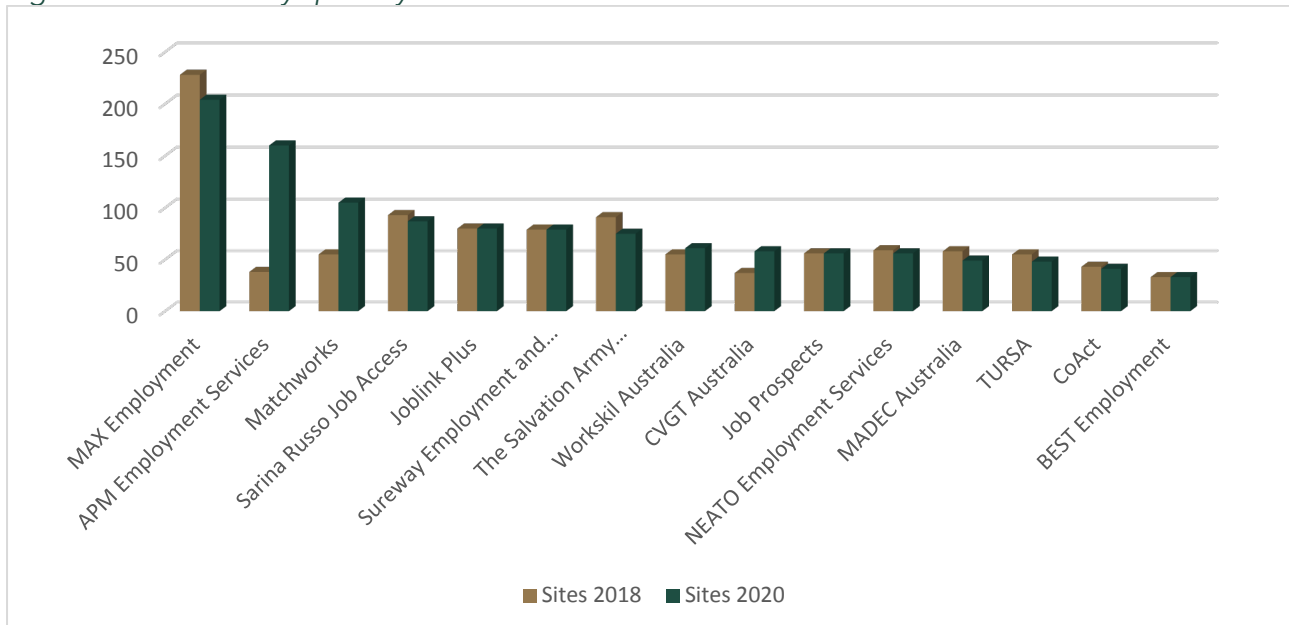
Figure 1: Decline in mainstream employment services providers



Source: Adapted from Jobs Australia State of Play 2015

While numbers have stabilised in recent years, the size of some providers has grown so that they now have a larger footprint, across larger regions. The agencies with the largest footprints and who have expanded the most are those indicated in Figure 2. It is notable that three of the top four providers are for-profit organisations. This shows that the existing quasi-market may have become ‘vulnerable to consolidation around a group of ‘insider firms’⁵, and it is probable these ‘insider firms’ will be advantaged in the licensing system because of their scalability.

Figure 2: Providers by quantity of sites



Source Per Capita analysis based on jobactive star ratings - count of sites 2018- 2020

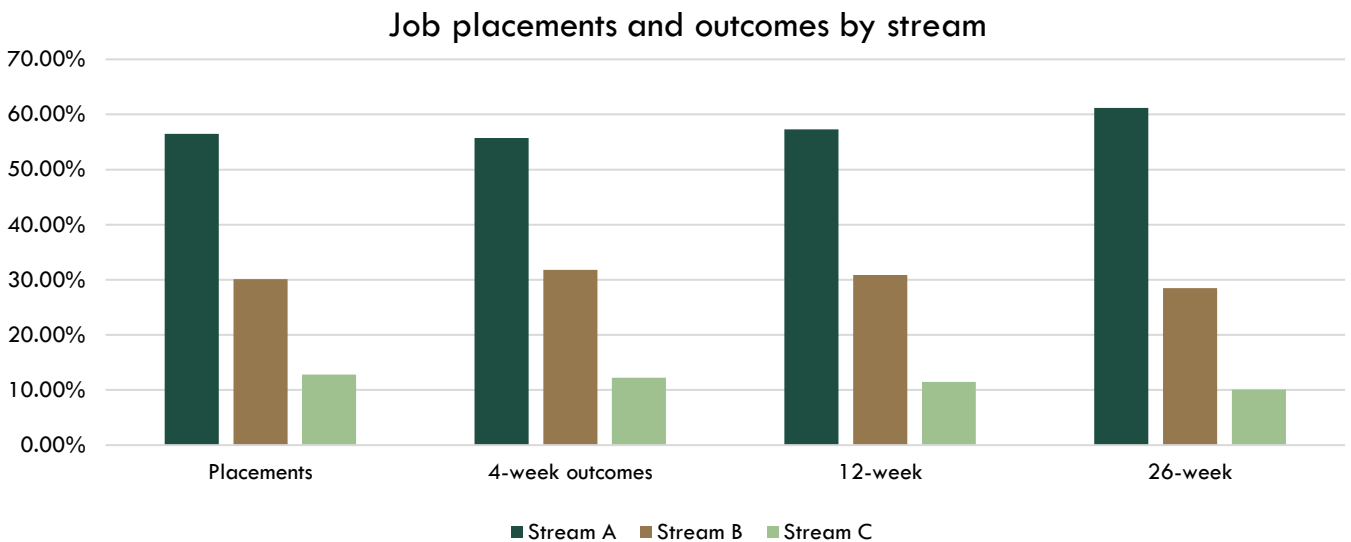
⁵ Considine, et al, 2019

In terms of the NESM design itself, the financial viability of the payment model directly affects the ability of a diverse market of agencies to survive. The payment model, which consists of a differentiated system based on outcomes, is one of the two major mechanisms for survival in the quasi-market, the other being the Star Ratings system⁶. Star ratings have eliminated providers who failed to meet performance standards in line with those of similar providers; while the payment system limited viability by withholding income when outcomes were not achieved.

Both the Star Ratings and payments were intended to drive competition and efficiency, but it also led to caseload management strategies such as ‘creaming’ and ‘parking’ being employed to make the contracts viable. Under the *jobactive* model, the volume of easier to place (Stream A/B) job seekers also boosted income to providers so that they could remain financially viable even when their performance with harder to place job seekers (Stream C) was poor.

Figure 3 illustrates the weighting of provider income from job outcomes under the *jobactive* system. It shows that, across all levels of job outcomes, Stream C outcomes were around 10% of overall outcomes, and Stream B around 30%.

Figure 3: *jobactive* outcome by Stream



Source: author’s own analysis generated from data supplied in Next Generation Discussion - Appendix E. (NB: Job placement figure refers to the overall number of outcomes)

While it is not possible to ascertain the overall breakdown of income by each stream due to the differential payment system, it is clear that income from outcomes in Enhanced Services will be substantially affected. Given the breakdown of job seekers intended for Enhanced versus Digital Services in the NSEM, it is reasonable to estimate that income will be the equivalent of approximately 50% of Stream B and 100% of Stream C, meaning that overall income to employment services will be vastly reduced.

The viability of this outcome weighted model is uncertain. Although Enhanced Services are intended to provide incentives to get the longer term unemployed into work, this is predicated on the availability of jobs for highly disadvantaged job seekers, which has become even more problematic since the COVID economic shock. The viability of small Enhanced Service providers

⁶ Considine, et al, 2019 see references

will be directly affected by smaller caseloads and the lower income from realistic outcome rates that can be expected in highly disadvantaged cohorts.

Although there are favourable changes to the fee structure in the NESM, these almost certainly will not be sufficient to protect the viability of small providers. As we argued in our earlier paper, *Redesigning Employment Services*⁷, while elements of Enhanced Services may lead to more personalisation, there remains a high level of prescriptiveness in the design and funding rules.

Per Capita believes that the NESM should be further unshackled from the constraints of the old *jobactive* model. Viable funding should not be dependent on outcome payments and should be sufficient to enable agencies to provide ongoing services regardless of labour market conditions. This may mean adopting a fee-for-service or Activity-Based funding⁸ model, rather than loading the contracts with outcome payments only.

To genuinely support the entry of small specialist organisations there needs to be clarity about market share arrangements and Employment Region coverage in the Request for Proposal. Specialist stand-alone services should be located only where there is caseload viability. Extensive modelling and consultation regarding these scenarios at the local level is required to support the imputation of viability, especially for small providers

How can the licensing system help cut red tape?

The central design problem of quasi-markets as identified in the public policy scholarship of Considine et al. is how to combine sufficient regulation with conditions that provide freedom for individual employment services agencies to have 'agency'.⁹ In the past, considerable effort has been spent analysing the problematic nature of 'red-tape' for providers. This impost has been identified in multiple reviews¹⁰, but it has persisted over the course of the three iterations of the employment services contracts. This administrative requirement reflects the Department of Employment's reluctance to hand-over 'black-box' contracts to providers without retaining 'hyper-specificity' of requirements.

A stark example of this hyper-specification is the *jobactive* deed and guideline's direction on what should happen in initial interviews with job seekers. In the 15 minutes for which most of these appointments are scheduled - a time limited because of high caseloads of around 140 people per worker¹¹ - *jobactive* providers are directed to undertake an unrealistic number of administrative functions, which means they are unable to spend time genuinely understanding and supporting the needs of unemployed people.

This hyper-specificity is a problem of social security delegation, in that providers are directed to make sure unemployed people are warned about what will happen to them if they don't comply with the Mutual Obligation requirements of their Job Plan. There is an administrative compliance impost related to the multiple forms of evidence they are required to capture to ensure they have met contractual requirements.

The licensing system does not offer any obvious solutions to this administrative burden on providers. The NESM is designed on the same 'principle agent problem' as were earlier designs,

⁷ https://percapita.org.au/wp-content/uploads/2020/04/Redesigning-employment-services-after-COVID-19_FINAL.pdf

⁸ See CPD for example: <https://cpd.org.au/wp-content/uploads/2017/07/451-SUB-AC-Centre-for-Policy-Development.pdf>

⁹ (e.g. Considine, et al, 2011; 2019)

¹⁰ See for example: APESAA (2013) <https://docs.employment.gov.au/documents/advisory-panel-employment-services-administration-and-accountability-final-report-feedback>

¹¹ *jobactive* Senate Inquiry (see references)

and has resulted 'a highly prescriptive contract that dictates the service approach and inhibits innovation and cooperation between provider organisations'¹².

More than twenty years of experience with marketisation has shown this principle-agent approach has been problematic. The quasi-market itself, in which performance accountability is determined by contractual requirements for efficiency and effectiveness, inhibits flexibility and innovation.

The NESM model appears hamstrung by the same principle-agent problem: the same contracting model is used, which imposes rigid requirements on providers that constrain them from being innovative, and which have led to them being unable to work flexibly with unemployed people¹³. It is important that this principle-agent problem is addressed otherwise the problems of homogeneity and lack of innovation will recur in Enhanced Services.

What measures could be included in the Provider Performance Framework?

The Productivity Commission argued that 'competition and contestability should only be pursued where they improve outcomes for service users and the community'¹⁴. Enhanced Services are focused on the most disadvantaged job seekers. The fewer job seekers who will receive face-to-face services, and their overall levels of complexity, suggest that competition does not serve a useful purpose in future employment services market arrangements. Rather, elimination of poorly performing providers should be based on direct feedback from the beneficiaries of those services.

It is a challenge to recalibrate the performance framework of Star Ratings to a model that does not simply reproduce the performance targets of job outcomes. However, the performance framework should be carefully designed for the specific attributes of the Enhanced Services caseload, who by definition are those with more complex barriers to employment (that is, former Stream B and C *jobactive* clients). The performance framework should not just be based on job outcomes and/or movement between Enhanced Services tiers.

If the proposed licensing model is to be based on a predetermined performance framework, it will not allow for ongoing evolution and agile responses to systemic feedback. It will also lack a mechanism for the collection of job seeker feedback about the service they receive that could lead to systemic reform of the overall model.

We suggest that indicators for the Performance Framework should be co-designed in partnership with intended service beneficiaries once the Enhanced Service model has been in operation for 12 months. This would enable sufficient time for implementation and operational issues to be resolved so that evaluation of services could be based on 'business as usual' indicators.

Repeated reviews of the employment services system led to consensus there was a need for an Independent Market Regulator and an Ombudsman, neither of which have been accommodated in the NESM. As described by Jobs Australia, the purpose of the proposed Regulator and Ombudsman was to provide a mechanism for ongoing shaping of the framework for service provision and quality. Jobs Australia described these functions as below:

¹²(Gallet, 2016: 34 -see references

¹³ Redesigning Employment Services https://percapita.org.au/wp-content/uploads/2020/04/Redesigning-employment-services-after-COVID-19_FINAL.pdf

¹⁴ Productivity Commission Review – Introducing Choice and Competition in Human Services: <https://www.pc.gov.au/inquiries/completed/human-services/reforms/report>

1. *An independent market regulator for employment services – to regulate and accredit existing and prospective employment services providers; to undertake quality monitoring, analysis of outcomes and how their definition supports the long term policy objectives for workforce skills and participation, to analyse the effectiveness of competitive market structures and contracting conditions in operation (including ongoing monitoring of red tape), to report on this to DEEWR, DHS, the Minister for Employment Services, employment services providers (both contracted and prospective), to contribute to and negotiate purchaser, provider and represented service user consensus about how the employment services system could and should be performing.*
2. *A purpose-built Commonwealth Employment Services Ombudsman service -to monitor the quality, relevance, and effectiveness of employment services from service users' perspectives (both those who are compelled to look for work and volunteers); to manage complaints, take and report on feedback, and inform and support communications to services and to advise on policy and market operations.*¹⁵

Further information about the components of the licensing model envisaged by Jobs Australia in its *Blueprint for a Better System* is included in Appendix A.

This proposed licensing model differs significantly from the NESM because licenses were envisaged as being 'black-box' – that is, they would be issued to larger numbers of providers who would be overseen by the Regulator. In contrast, the NESM model reproduces the Principle Agent Problem discussed above, which will likely lead to over regulation.

Per Capita is concerned that the proposed licensing system does not support the swift replacement or remediation of poorly performing providers. Reviews of provider performance should occur monthly, and remediation within swift time frames every three months.

How can the department ensure job seekers and employers are receiving a quality service?

The Productivity Commission¹⁶ has noted that consumers should have choice over the human services they access and who provides them, unless there are compelling reasons not to provide such choice. This informed user choice should be made available by ensuring users have knowledge about provider performance that has been provided directly by job seekers and employers. The role of the Ombudsman as outlined above is critical to ensuring the transparency and information that would support informed user choice.

However, in the absence of an Ombudsmen job seekers and employers should be able to provide feedback on the services provided via a direct method such as an online rating portal.

¹⁵ Jobs Australia APESAA submission see references

¹⁶ Productivity Commission Review Competition in Human Services

Post-COVID unemployment and the design of NESM

Per Capita has been monitoring policy responses to the post-COVID economic shock, and have noted in various publications over recent months our concerns that the NESM was designed before the pandemic and was therefore unable to account for the further entrenchment and scarring of unemployment on the most disadvantaged job seekers who will be directed to the Enhanced services system.¹⁷

There is an opportunity to recalibrate the design of the NESM before implementation to improve the services available to all Australians looking for work in the current labour market conditions. We suggest that the following elements of good active labour market policy are introduced.

Job counselling and vocational guidance services

Employment Services should integrate skilled job counselling and vocational guidance into their services. Every unemployed person should be able to meet with someone who can help them assess the availability of employment opportunities in their local area and understand how to access them, and provide advice on skills reorientation or training that may be required, including advice on access to free and low-cost courses being made available through the States and *JobTrainer*.

Wage Subsidy Intermediaries

After considering the current disadvantages faced by unemployed people who are most at risk of long-term unemployment, Per Capita now believes the government should invest in employing Wage Subsidy Intermediaries.

Competition between *jobactive* agencies has long caused challenges for businesses in their dealings with the system, as providers compete for exclusive relationships with employers and have demonstrated unwillingness to cooperate and share vacancies fairly with other providers.

Wage Subsidy Intermediaries engaged to broker employment placements for unemployed people across different age and eligibility cohorts, including for *JobMaker*, could alleviate these difficulties by working directly with Regional Employment Coordinators and other employer-facing organisations. Wage subsidy intermediaries would need to be funded in addition to *jobactive* agencies, but agencies should be required to actively promote job openings, as well as advertising them on the *jobactive* and *jobsearch* web portals and apps. Details of upcoming job vacancies with attendant wage subsidies should be pooled and advertised across all *jobactive* agencies, rather than restricted to one provider.

The National Disability Recruitment Coordinator (NDRC) is a similar model used in Disability Employment Services, and provides impartial access to wage subsidised jobs to a range of candidates. While the NDRC has had some challenges, the Wage Subsidy Intermediary service could be targeted not only at large employers, but also at small employers. Wage subsidy intermediaries could work with small and medium sized businesses to discuss workforce planning, as well as advocating for jobs with wage subsidies to be provided to disadvantaged cohorts.

¹⁷Anglicare Job Snapshot 2020: <https://www.anglicare.asn.au/research-advocacy/jobs-availability-snapshot>

Direct job creation

There is a clear need for government investment in direct job creation projects in the public and community sector. For the community sector, job creation could be established by creating community economic regeneration grants to provide adequate funding for supervision, for capital equipment and to provide for work-experience employment that is consistent with industrial relations protections. Grants to organisations with a track record of supporting the skills development of people not successful in the formal education system or labour market, and who have the capacity to develop projects and programs for long term unemployed people, should receive priority.

New public sector jobs, especially in regional Australia and the outer suburban regions that have been hard hit by unemployment, are an essential component needed to create secure, long-term jobs and boost wage growth in order to restore economic activity and pursue full employment.

Conclusion and summary of concerns

The McPhee review of employment services resulted in a series of recommendations about the New Employment Service model.¹⁸ The discussion paper on the licensing model reiterated those design principles to help shape the licensing system.

The following table provides a summary of Per Capita’s analysis of the strengths and weaknesses of the proposed model.

Streamlining procurement	Summary response
Responding to local needs	The licensing model does not provide for greater local level arrangements: it privileges the entry of large providers both in the first instance, and in subsequent licensing rounds.
Providing choice for job seekers and employers	This will depend on maintaining and enabling the swift replacement of providers. The time frames for removing poor providers from the system are too slow. Mechanisms for switching off the supply of job seekers to poor providers/sites need to be investigated.
Encouraging greater diversity of providers	The numbers on panel will be capped, and sub-panelists will only remain license ‘ready’ if they are already providing services in that area, or are large enough to scale-up to begin operating in new areas.
Rewarding strong performance	This needs to include an element of job seeker and employer satisfaction in the performance framework.
Harnessing specialist expertise	Specialist viability is problematic unless measures are taken to protect market entry such as through a bespoke procurement exercise. Generalist providers’ claims of specialist capability should be treated with caution.
Balancing flexibility and market stability	The licensing model favours market stability for large providers; and does not offer flexibility in the handover arrangements to new market entrants

¹⁸ McPhee Expert Panel (2018) I want to work, Employment Services 2020 Report, Australian Government Canberra.

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Appendix A – Jobs Australia Blueprint¹⁹ – licensing model

Jobs Australia developed the idea first proposed by the Productivity Commission of a licensing-based system for employment services. Jobs Australia's *Blueprint for a Better System* 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 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

¹⁹ [https://www.ja.com.au/sites/default/files/ja104 - blueprint for a better system final.pdf](https://www.ja.com.au/sites/default/files/ja104_-_blueprint_for_a_better_system_final.pdf)

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.