

Senator the Hon Michaelia Cash  
Minister for Employment, Skills, Small and Family Business  
PO Box 6100  
Senate  
Parliament House  
Canberra ACT 2600

Dear Minister

The National Employment Services Association (NESA) writes to you on behalf of our members who are service providers under the Department of Education, Skills and Employment's (the Department) jobactive Deed (the Deed). As always NESA and its members wish to work collaboratively with the Government to ensure Australians receive the assistance they need to find and keep employment, and business is supported to access the labour they need to be productive. Our goal like yours is to ensure there is a viable and strong employment services sector to support job seekers and employers due to the unprecedented impact on the labour market as a result of the COVID 19 pandemic.

Our members have been successfully providing jobactive services under the Deed since 2015 and are expecting to continue to do so until the cessation of the Deed on 30 June 2022. Our members remain ready, willing and able to deliver all contracted jobactive services to ensure unemployed Australians are assisted back into employment, including during and post COVID -19 and the related economic downturn.

In this correspondence we outline a series of issues, as our members see them and conclude with questions, to which our members request an urgent response.

### **The Decision to Retain Job Seekers in the Online Employment Service**

In March 2019 the Deed was extended from 30 June 2020 to 30 June 2022 principally to allow sufficient time for the evaluation of the New Employment Services Trial including the Online Employment Services trial, prior to the proposed national implementation of New Employment Services in July 2022.

To implement the NEST the Department undertook appropriate consultation and negotiation with service providers to enable the trial.

Providers in the two trial Regions and the Department agreed to a variation (NEST Variation) to their Deed whereby the Department provided Digital services to "Stream A" and providers enhanced services to Stream B and C job seekers. Further in acknowledgement of the reduced caseload the variation included a NEST fee schedule with higher payment amounts for enhanced services (Stream B and C services) than the providers would have been entitled to under the standard jobactive Deed.

The Department's website states as at 27 August 2020 the following:

*"Government employment services are being transformed to deliver better services to job seekers and employers and a better system for providers. The new model is being trialled in two regions from 1 July 2019 before being rolled out nationally from July 2022."*

Early in the onset of the pandemic, the Department informed providers of the need to place job seekers in Online Employment Services as a temporary measure as the employment services system was unable to cope with the significant flow of new job seekers arising from the impact of the pandemic. The Department repeatedly advised providers to prepare their organisations and workforces as these job seekers would be referred to face to face jobactive services in the short term.

In its CEO letter dated 24 July 2020 and related Livestream communication the Department informed the sector of the intention to “invest in and advance the Online Employment Services System” ahead of the scheduled national rollout in July 2022 and prior to the completion of the trial and evaluation.

The sector notes the trial is far from complete, many critical elements of the new model are not yet developed or been incorporated in the trial, and the trial itself has been severely disrupted by both the national bushfire crisis as well as the COVID 19 pandemic.

This significant decision involves retaining most of the existing jobactive eligible job seekers who have not already been referred to jobactive providers in the Online Employment Service, and diverting all future new registrants classified as Stream A to Online Employment Services effective immediately. Assessment processes have not been fully developed or implemented.

There is a risk that these job seekers will become long-term unemployed without appropriate assessment and consequential support by providers.

### **Adjusted Funding**

In response to the impacts of the pandemic a temporary rebalance of the jobactive Administration and Outcome Fees was implemented, effective 12 June 2020. This decision was welcomed by the sector and was made to ensure the ongoing provision of employment services given the economic and related labour market shock at the height of the pandemic. This was achieved through a Deed variation (in accordance with contract requirements) which increased Administration fees (by approximately 56%) and reduced Outcome fees (by approximately -12%) until November 2020 to achieve a 50-50 funding ratio. This was formally notified via jobactive Notice No. 15.

There has not been a transparent account of what data and assumptions were used to calculate the adjustments to achieve the 50-50 funding levels, however it is reasonable to assume that projected job seeker flow into jobactive informed the adjustment.

NESA observes that as a result of the decision to retain approximately 400,000 of the estimated 800,000 (50%) job seekers in the Online Employment Service who were originally placed there temporarily, a significant proportion of jobactive provider market share (around 30% of the total jobactive eligible caseload) has been removed. The sector estimates that the retention of these job seekers will reduce revenue by in excess of \$156 million in administration fees (400,000 @ adjusted base non SPI) for the period to November 2020, and by over \$107 million per six months (@ non adjusted admin fee rate) for the remainder of the contract.

Therefore given the combined reduction in projected job seeker referrals to providers and the decrease in outcome funding levels as part of the adjustment there are questions if the temporarily adjusted fees will deliver the 50-50 ratio as intended and if the net result is consistent with standard funding levels.

In taking the decision to refer future Stream A job seekers to the Online Employment Service providers access to jobactive market share will be significantly reduced with Stream A making up over 85% of the total new entrant population for jobactive (Evaluation of jobactive Interim Report January 2020). This action also reduces the potential pool of job seekers for whom a claimable outcome may be achieved and as such there are likely to be further flow on financial implications.

### **Introduction of a New Service Provider and Competitor in the Employment Services framework in advance of 2022 commissioning process to introduce reforms**

The decision to retain job seekers streamed to jobactive in the Online Employment Service effectively results in:

1. The creation of a public provider of jobactive
2. The reduction of contracted providers market share

Effectively the Department has introduced a new competitor into the jobactive market as the sole provider of the Online Employment Service to jobactive job seekers. This competitor is the Commonwealth itself through the Department expanding its existing contact centre supporting the two trial regions.

In advancing the early roll out of the Online Employment Services System the Department:

1. has taken the action despite valid and binding Deeds in place which are effective until 30 June 2022;
2. unilaterally reduced the contracted market share of every service provider without negotiation, consultation or agreed variation of the Deed;
3. taken the abovementioned action in advance of, and in the absence of a complete and proper evaluation of Online Employment Services or NEST. (Noting no published information about the early findings of the Online Employment Services Trial (OEST) have been released. Verbal reports regarding early findings of OEST have not been supported by provision of methodology or data. Furthermore, we note that the early period of the OEST to which the early findings relate principally involved a narrow selection of job seekers and those meeting the criteria also volunteered to participate in OEST. As such the sector does not consider this to be a representative sample of the Stream A caseload)
4. taken the abovementioned action in advance of the release of the discussion paper on the future model on which it proposed to consult with the sector (this paper was expected to be released in August 2020).

The Deed, to which the Department is a signatory as a representative body of the Australian Government, outlines the Department's authority and responsibilities to undertake actions. The sector recognises that clause 20 of the Deed permits the Department to vary certain terms "**by providing Notice to the Provider**".

The Department announced that Online Employment Services would be implemented nationally ahead of schedule during a Livestream and it was noted in a CEO letter. Neither of these notifications would appear to meet the requirements of Deed clause 71 Notices.

In taking these actions the Department has brought forward elements of the proposed New Employment Services model approximately two years ahead of the scheduled commencement in July 2022. Unlike the process conducted with providers in the NEST Regions this has occurred without consultation or any transparent consideration by the Department of the implications of this decision on our members currently contracted to deliver jobactive until July 2022, or their legal rights.

## **Conclusion**

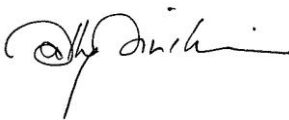
We fully appreciate that these are unprecedented times in which we are all working collectively under enormous pressure to mitigate the impacts of the pandemic and its crushing blow to the health and economic well-being of our Nation and its citizens. Hence, our members are perplexed that a decision has been taken to implement a system that has not been fully developed, trialled or evaluated in the midst of the worst unemployment crisis of our time, and which replaces an established network of service provision which has demonstrated over the past twenty years to be one of the most effective public employment services in the world. By way of contrast, our international colleagues are reporting that they are currently substantially expanding their investment and associated workforce in their public employment services (including contracted services). Our members have demonstrated agility and responsiveness throughout the pandemic. We note that it was the broader systems inability to cope with flow of job seekers which created the bottleneck in job seekers referral to personalised jobactive assistance. Our members remain ready, willing and able to provide assistance despite the challenges of the circumstances associated with the pandemic.

The employment services sector accepts that there will be variation in caseloads as a consequence of labour market change and are accustomed to adjusting as needed such as during the peak of the resources boom and throughout the Global Financial Crisis. However, the current changes to contracted arrangements come as a result of a significant decision, the rationale for which requires more detailed explanation and consultation.

Our members have requested that NESAs pursue these matters on their behalf. Our members desire to see a resolution to the issues and concerns expressed throughout the body of this correspondence through respectful, open and transparent exchange in accordance with the Charter of Deed Management. NESAs requests the opportunity for formal dialogue regarding the above matters as soon as possible. In the interim of arranging discussions our members have raised a series of questions which we have attached (Appendix A) and to which we would appreciate an urgent response.

As always, I look forward to meeting with you to have a constructive discussion regarding the outlined matters, the future directions of Australian employment services and the critical assistance it provides to Australian job seekers and employers, most particularly at this critical juncture in our Nation's history.

Kind regards,



Sally Sinclair  
CEO

4 September 2020

## Appendix A: Questions

1. What was the approach to modelling the temporarily adjusted fees to deliver a 50-50 ratio?
2. When will the modelling of the temporary fee adjustment be available to the sector in keeping with commitment to timeliness and transparency outlined in the Charter of Deed Management?
3. Has there been review of the modelling in light of the decisions made to ensure commitments to funding are met? If so, when will the revised modelling be available to the sector in keeping with commitment to timeliness and transparency outlined in the Charter of Deed Management?
4. With regard to the Online Employment Service (OES):
  - What is a full description of the services being delivered to job seekers by the Department through the Online Employment Service?
  - Which job seekers will the Department service through OES?
  - What is the maximum duration that a job seeker will remain in the OES?
  - What is the equivalent contracted market share that is being removed from providers?
  - For how long will these services be in effect- permanent or only related to COVID relief period?
5. If these services are to be in effect permanently when will providers be formally notified of the advancement of the Online Employment Service in accordance with Deed requirements?
6. As a model procurer and contractor, under what contractual right or authority has the Department made to retain and directly service job seekers in advance of completion of the trial and a commissioning process for introduction of reformed employment services?
7. How were the requirements of the Commonwealth Procurement Guidelines met? (Particularly clause 4.4 given the implementation of this decision and related cost of the entrant of a new provider delivering services)
8. What considerations did the Department make in respect of competitive neutrality obligations?
9. How will the Government ensure that there is no conflict of interest arising from the Department undertaking both a provider and regulator role?
10. How does this action comply with the Government's obligation under Free Trade Agreements and their relationship to procurement standards?
11. Given the advanced roll-out of the Online Employment Service, if these services are to be permanently effected, why weren't consultations and negotiations conducted with contracted jobactive service providers in the affected 49 regions in the same manner as was undertaken to gain agreement on variations with jobactive providers in the 2 NEST regions?
12. As the Department is advancing implementation of the Online Employment Service, thereby affecting market arrangements similarly as to that involved in NEST, what is the reason that all services providers are not offered the amended funding arrangements as those negotiated under the NEST variation?
13. What evidence does the Department have by way of impact assessment which demonstrates the effectiveness of the Online Employment Service as well as the cost efficiency in comparison to the current model? When will this be made available?