



National Employment Services Association

Response to the Exposure Draft for the New Employment Services Model 2022
Purchasing Arrangements



About NESA

The National Employment Services Association (NESAs) is the peak body for the Australian employment services sector. Established in 1997, NESAs work is focused on achieving a **vision** of 'Opportunity for everyone through employment and inclusion'. NESAs positions are evidenced based and informed by local and world-best research and social policy. NESAs is the **voice** of the sector providing advocacy and representation to ensure Australian job seekers and employers have access to effective labour market assistance. NESAs works collaboratively with government and non-government stakeholders to support the achievement of its vision including engagement with international expert bodies such as the OECD. NESAs delivers **support** to its member organisations through policy guidance, operational advice and capacity building services, to ensure a strong, effective and vibrant sector is available to support our economy and community through employment.

NESAs membership is extensive, inclusive and diverse. Our membership is open to all contracted providers (not-for-profit, public and for-profit). Our members deliver the breadth of Australia's diverse labour market assistance programs including jobactive, Disability Employment Services (DES), the Community Development Program (CDP), Transition to Work (TTW), Youth Jobs PaTH, ParentsNext, Time to Work, Career Transition Assistance and Vocational Training & Employment Centres (VTEC). A large proportion of NESAs members deliver multiple programs, including State funded initiatives such as Jobs Victoria Employment Network (JVEN), and they are also engaged in the delivery of vocational education and training. NESAs extensive membership, and intensive member and stakeholder interaction provide unique insights into the policy and operational settings that underpin labour market assistance in Australia.

Introduction and General Feedback

The National Employment Services Association welcomes the opportunity to provide feedback on the Exposure Draft for the New Employment Services Model 2022 Purchasing Arrangements (DRFP NESM). NESA acknowledges that the DRFP is the culmination of an extensive process which commenced in 2018 to design the Next Generation of Employment Services¹. A considerable investment of time and expertise by a range of stakeholders including an Employment Services Expert Advisory Panel, 560 participants in consultation sessions and 451 written submissions contributed to the development of a new model of employment assistance. The consultation process culminated in the release of the I Want to Work report² in 2018 which provided a blueprint for New Employment Services.

The I Want to Work paper³ outlined the rationale and commitment to the new model of employment assistance stating: *“The future employment services system will ensure that funds are invested in smarter, more targeted ways. It is smarter to invest in a digital and data ecosystem which helps all job seekers look for work, with many being able to self-serve. This creates cost efficiencies. It is smarter to invest in automating business processes and administration. This creates time efficiencies. It is smarter to invest in a data ecosystem which analyses what works and what doesn't for job seekers. This creates outcome efficiencies. **It is smarter to spend this time and money on job seekers who need the most help. It is the best chance we have to break cycles of welfare. It's the best chance we have to cut entrenched unemployment. This is how we will invest”.***

The I Want to Work report was clear in its intent that the new model of employment services should be focused on directing more resources to those job seekers who need the most assistance than the current jobactive program affords them. Unemployment has taken on new significance with the unprecedented impact of the COVID-19 pandemic on employment and Australian labour markets. While grateful for the strong recovery experienced to date, the risk of further expansion of concerning pre-COVID rates of long-term unemployment as well as underemployment remain high.

The New Employment Services Model (NESM) represents the most significant reform in Australia's employment services since 1998. The NESM offers significant potential for creating transformational change to job seekers if all stakeholders keep true to the intent of the model and remain focused on breaking cycles of welfare, entrenched unemployment, and disadvantage. The release of the DRFP has been highly anticipated and NESA has consulted broadly with suppliers (current and potential new suppliers) gathering feedback in relation to the DRFP.

The following is general feedback in relation to the DRFP which will be followed by a more in-depth response to the various aspects of the DRFP

1. Time to review and contribute feedback

The DRFP was released at the close of business on the 17th of June 2021 and contained seven principal documents totalling 600 pages and was accompanied by supporting material. The deadline for feedback being the 7th of July 2021 enabled only 14 days for review, including undertaking indicative caseload and financial modelling from the information provided and preparing feedback for submission. NESA received extensive feedback that while many providers intended on making a submission, the period allowed for provision of informed comment was grossly insufficient and limited the depth of their consideration and contribution.

2. Detail in the Exposure Draft

The NESM represents significant transformation with many new features requiring consideration as well as continuing elements and requirements, many of which also appear to have been amended but not discussed in previous consultations or highlighted in the DRFP information sessions.

¹ The next generation of employment services discussion paper, Department of Jobs and Small Business 2018

² I want to work, Employment Services 2020 Report, Department of Jobs and Small Business 2018

³ I want to work, Employment Services 2020 Report, Department of Jobs and Small Business 2018

NESA has received substantial feedback from current and potential suppliers that the Exposure Draft lacks the level of detail required to fully assess the potential opportunity, resources and capability requirements to deliver NESM. Many past bidders note the Exposure Draft lacks the granularity provided in previous employment services commissioning processes at the exposure draft stage. Failure to include draft selection criteria will reduce potential suppliers' capacity to prepare for the release of the Request for Proposal and will put resources involved in preparation and submission of bids under extra pressure.

Recommendation:

- **Continue the Question and Answer Process beyond consultation on the Exposure Draft**
- **Prioritise rapid response to Questions**

3. Workforce Specialists

Potential suppliers cautiously welcome the introduction of Workforce Specialists noting that it will be important to have strong stewardship of the market and ensure that services to employers and key industries are delivered collaboratively. In order to deliver the best return on investment Workforce Specialists should have KPI's which ensure they share a focus on ensuring the most disadvantaged job seekers are supported to gain employment.

NESA has received feedback that many potential suppliers are keen to understand the rationale for limiting the prospective pool of bidders by excluding providers of Enhanced Services including their related entities. While acknowledging that actual or perceived conflicts of interest would need to be managed, it appears excessive to limit the pool of prospective bidders and dismiss potential expertise and service capability.

4. Digital Employment Services

NESA and providers recognise the potential benefits that the functionality, tools, and resources available through the Digital Employment Services platform offer. We recognise that the platform is a work in progress and will develop and evolve over time. Providers are of the view that a formal communication process should be developed to ensure frontline Enhanced Services and other complementary programs are aware of and can effectively introduce and assist job seekers and employers to fully utilise the platform.

The Exposure Draft of the New Employment Services Model 2022 Purchasing Arrangements

1. Request for Proposal – Adequacy of Timeline to Lodge Submissions

As stated in the Exposure Draft the Government is undertaking the largest reform to employment services since 1998. The New Employment Services Model (new model) will commence in July 2022, underpinned by a modern Digital Employment Services Platform (digital platform). The Exposure Draft states that the indicative time of the release of the New Employment Services Model (NESM) Request for Proposal (RFP) is early September 2021 with an indicative closing date in October 2021.

This Exposure Draft describes the proposed purchasing arrangements, timing and requirements for Enhanced Services, including some cohort Specialist Services, Employability Skills Training (EST), and Career Transition Assistance (CTA) which are to be procured for 51 Employment Services Regions, through the new employment services RFP scheduled for release in September 2021. While potential suppliers acknowledge that there is intended to be a single response required for Organisational Capability, this minor streamlining does not compensate for the increased pressure resulting from concurrent procurement of three programs.

While the intended timeline for the NESM purchasing was known, the decision to commission Enhanced Services, EST and CTA through a concurrent process only became public with the release of the DRFP on 17 June 2021. Potential suppliers have reported that the limited notice regarding the concurrent commissioning process will consequently adversely impact their access to additional expertise to support their bid preparation.

Considerable resources are required to develop and submit a quality bid for any one of the programs and procuring three programs concurrently significantly increases resource requirements. Responding to Request for Proposal of this magnitude is likely to stretch potential suppliers' resources. NESMA has received feedback which indicates that the resource intensive nature of this procurement process will be a significant barrier to attracting bids from diverse potential suppliers. Furthermore, that bid resource requirements will be a particular obstacle to participation and success of SMEs, including those with the specialist expertise that is desired for NESM. Past commissioning of EST and CTA were stand-alone processes with a 25-day timeframe for suppliers to prepare and submit each bid.

The Exposure Draft states the new system aims to promote greater competition and diversity among employment services providers and enhance the government's capacity to respond rapidly to emerging and changing labour market needs. In order to ensure procurement results in the commissioning that has the highest probability of attracting the best provider options for each service/program, adequate time must be given to prepare and lodge submissions.

The Commonwealth Procurement Rules (CPR)⁴ states that entities must provide sufficient time for potential suppliers to prepare and lodge submissions in response to an approach to market. The CPR further states that the minimum time limit for potential suppliers to lodge a submission must be at least 25 days. It is further clarified that this is the minimum time limit to lodge *submissions* and **should not be treated as default time limits**.

Recommendation:

- **At least 45 days is provided to potential suppliers to prepare and lodge submissions to NESM**

2. Specialist Enhanced Services

Potential suppliers welcome specialist Enhanced Services as part of NESM. Furthermore it is generally welcomed that a managed approach is being taken to ensure that specialist licences are located in markets with adequate numbers of job seekers in the specialist cohort, with a view to reducing risks of provider or market failure as a result of financial viability issues.

However, a number of potential suppliers have raised questions with regard to the provision of specialist licences to support job seekers living with a disability to improve their employment prospects. NESMA recognises that the cohort of job seekers living with a disability is significant and further acknowledges that Enhanced Services providers should have the capacity to service all cohorts. A number of potential suppliers have raised that disability specialists may be beneficial and could include expertise and resources targeted at particular groups within the cohort. For example NESMA notes that specialists under Job Network and Job Services Australia included mainstream specialist services for people with hearing and vision impairment.

Recommendation:

- **Review consideration of people with disability specialist Enhanced Services**

3. Complementary Programs and other Services

Complementary Programs are an important element of the employment services framework, each providing valuable targeted interventions and offering a suite of options to enable tailoring of services.

There is strong dissatisfaction that job seekers in Enhanced Services are not provided access to a separately funded Employability Skills Training (EST). It appears very contrary to the intent of the model to provide expanded EST to job-ready job seekers who arguably have the least need for this type of intervention; while making EST only available to those most disadvantaged in Enhanced Services on a fee-for-service basis.

⁴ Department of Finance: Commonwealth Procurement Rules Achieving value for money 14 December 2020

Potential suppliers are opposed to making EST and other interventions like EST non-permissible Employment Fund purchases. The preferred position is that access to separately funded EST is made available to all job seekers in Enhanced Services. As will be discussed elsewhere financial modelling data provided thus far indicates that providers will have limited capacity to invest in interventions such as EST as the model will operate at a loss in the early years and is unlikely to deliver a return prior to three years, and only if providers can contain their fixed costs. NESAs also notes that the financial modelling undertaken by KPMG, which informed the NESM payment model, was based on NEST with full access to complementary programs, flexible use of the Employment Fund and fewer activity requirements to deliver than what has been included in the Enhanced Services model. As such, eroding any of these resources is likely to further compromise the financial viability of the Enhanced Services Funding model.

Recommendation:

- **Provide Enhanced Services job seekers access to a separately funded EST program.**

4. Job seeker assessment and referral to Services

NESA welcomes the development of the Job Seeker Assessment Framework (JSAF) to ensure job seekers receive the services most appropriate for them. It is of concern that this critical piece of employment services is yet to be fully developed and trialled. Providers support the intent for JSAF to be dynamic, support job seeker disclosure and engagement, minimise reporting duplication for job seekers, and use data analytics to personalise interventions and support. NESAs also acknowledges the intent to establish a number of safeguards to ensure job seekers in Digital Employment Services requiring additional assistance are identified.

Recommendation

- **Noting the findings of the NEST evaluation it is recommended that strong job seeker communication strategies are developed to ensure job seekers are aware of their service options including their ability to opt in or out of Digital Employment Services and elect to receive Enhanced Services.**

Job Seeker Classification Instrument

The sector is of the understanding that the Job Seeker Classification Instrument (JSCI) including the online version, the Job Seeker Snapshot, will remain at the heart of the assessment framework and determination of service eligibility.

Question 2.13 in Frequently Asked Questions asks: **“Will the Job Seeker Classification Instrument (JSCI) thresholds for service eligibility or outcome payments change during the licence period?”**

The response states that “The new Job Seeker Assessment Framework will be more dynamic and evolve as the system matures and the Department’s analytical capabilities are enhanced. In addition, the JSCI is periodically updated to ensure it reflects the caseload characteristics and labour markets when determining the risk of long-term unemployment **to an individual**”

NESA requests response to the following questions.

- What methodology will be adopted for setting JSCI scores as thresholds for service eligibility?
- How frequently is it proposed to review and potentially change factor weightings or other elements of the JSCI?
- Will the Department engage independent experts, business and/or community service stakeholders in the JSCI review process?
- How will the provider network be engaged in any JSCI review process?
- How will the provider network be informed of change to the JSCI?
- How will providers be advised of the repercussions of such change to the JSCI on job seekers service eligibility?
- Can the Department provide an overview of what consideration was given to changes to the JSCI as part of KPMG’s assessment of the financial viability of Enhanced Services?

The NESM is the first time that it is proposed to tie employment services outcome payments to JSCI scores. Employment services have historically and will continue under the NESM to be primarily paid using a pay-for-performance methodology. That means an employment services organisation's financial sustainability is predicated on their ability to deliver paid outcomes. As such outcome level eligibility is central to the terms of trade and critical to sound financial forecasting and management. Unilaterally adjusting the terms of trade would not be considered reasonable conduct in any business dealings. This raises concerns that linking the JSCI with the significantly different functions of assessing risk of long term unemployment and establishing outcome payment levels may not have efficacy.

It is our understanding that the principle function of the JSCI is to determine the risk of long-term unemployment in order to establish service eligibility. Research shows current duration of unemployment is a strong indicator of risk of long-term unemployment. To illustrate, the Reserve Bank of Australia used micro-level labour market data to show that future employment prospects are closely tied to the duration of unemployment: people who are unemployed for longer are less likely to find a job. Evidence was also found that an extended period of unemployment can harm people's employment prospects for a long time afterwards⁵.

Previous iterations of the JSCI included the job seekers duration of unemployment as a factor to determine risk. This factor was removed with the introduction of Job Services Australia on the stated basis that entry into Stream 4 would occur via the Employment Services Assessment conducted by Centrelink or CRS at that time. With the removal of Streams and Tiers in the New Employment Services Model there is a strong argument to reintroduce duration of unemployment as a factor to improve the accuracy of assessing risk of long-term unemployment and identifying job seekers most disadvantaged in the labour market.

Recommendation

- **Assess the efficacy of reintroducing duration of unemployment as a factor in the JSCI**

5. Job Seeker Activation, Points Based Activation and mutual obligation requirements

NESA and its members welcome a more flexible approach to mutual obligation and improving job seeker agency in determining the activities that best meet their needs as part of the NESM. For the intent to be realised resources must be available and sufficiently flexible to support job seekers to undertake a range of activities. Encouraging and supporting job seekers to take personal responsibility and avoid unnecessary interaction with the compliance framework also requires that processes are reasonably easy to manage. In this regard we offer feedback from NEST areas which indicate job seekers are finding the Points Based Activation reporting process overly complex and are reverting to job search as it is easier to manage.

Recommendation

- **Prioritise enhancing usability of reporting functionality in order to realise the intent of Points Based Activation**

6. Panel Duration

Potential suppliers welcome the establishment of the National Panel for an initial period of six years with options to extend a further four years. However, clause 92.3, states that the Department will conduct an Annual Licence Review with the capacity to terminate a licence for poor performance. As the first Review is proposed to be undertaken in September 2023, the reality is that providers only have surety for 15 months. As indicated in previous submissions early data has been highly volatile and implementing this time frame for the first Review is considered too short. Consistent feedback indicates that extending the timing of the first Review to December 2023 and allowing at least 18 months to establish services and stabilise performance is preferred.

⁵ Reserve Bank of Australia Bulletin, Long-term Unemployment in Australia, Natasha Cassidy, Iris Chan, Amelia Gao and Gabrielle Penrose December 2020 accessed online <https://www.rba.gov.au/publications/bulletin/2020/dec/pdf/long-term-unemployment-in-australia.pdf>

NESA notes provider and frontline staff turnover is seen as a negative element of current services which the NESM seeks to address and avoiding premature performance assessment that may lead to unwarranted turnover will benefit job seekers and employers.

7. Remaining on the panel

NESA recognises that a range of measures will need to be put in place to ensure members of a panel without a head licence remains capable and available if needed.

It is important that potential suppliers understand how quickly they will be required to mobilise, to establish services in a Region. Clarification is required about what the Department considers “without extensive delay or difficulty” in relation to commencing services if issued a licence.

Recommendation:

- **The Department consider establishing a reasonable benchmark for the establishment of services and minimum forward notice to providers of issue of licence prior to expected commencement of services.**

8. Information Technology

NESA acknowledges the importance of cybersecurity and supports the need for the Department of Education, Skills and Employment (DESE) to seek assurances from employment services providers. NESA also recognises that the Employment Systems Assurance Framework and Right Fit For Risk (RFFR) focuses on people and location security in addition to cybersecurity. NESA acknowledges that the Department has moved to overcome issues with the initial RFFR and welcomes the establishment of the DESE Information Security Systems Scheme. NESA is reassured by the fact that JAS-ANZ are now assessing certifying bodies to ensure that auditors understand the requirements and have the skills and personnel to assess. This will benefit those working through the requirement in the future.

NESA is concerned at the lack of specific detail in the Exposure Draft around timeframes. A similar lack of detail has caused considerable issues for current providers, and NESA is concerned that the absence of specific dates by which External Systems Assurance Framework (ESAF) requirements must be met will lead to similar difficulties for providers responding to the RFP. In particular, NESA notes the following proposed clauses from the Exposure Draft – for the New Employment Services Model 2022 Purchasing Arrangements:

“8.1 If offered a licence, Respondents will be required to attain accreditation of their Information and Communications Technology (ICT) environment.”

“8.1.4 it is a mandatory requirement that a minimum of [Essential Eight] Maturity Level One can be effectively demonstrated across its organisation at the time the Respondent commences Service delivery for the respective Service.”

NESA recommends that these clauses be expanded with specific details regarding:

- Re 8.1 – The date on which providers will be required to achieve RFFR, and specifically the sanctions that providers who do not meet the requirement will be subject to
- Re 8.1.4 – Given that Employment Services Deeds are subject to a transition period that commences prior to 1 July 2022, what is the date that DESE considers to be the date on which a provider ‘commences service delivery’, and what sanctions will be applied should a provider not achieve [Essential Eight] Maturity Level 1 on the ‘commence service delivery’ date.
- NESA seeks clarification as to whether RFFR is a component of the Quality Assurance Framework, which requires compliance within ‘nine months of the issuance and commencement of services.
- NESA also requests that specific detail around eligibility and assessment criteria for the Capacity Building Fund be included in the DRFP.

9. Physical security expectations

NESA understands the need for physical security measures that minimise or remove the risk of information and physical assets being made inoperable or inaccessible or accessed, used or removed without appropriate authorisation. NESA further acknowledges that meeting physical security expectations is sound business practice that also helps to keep staff, clients, information, and physical assets safe.

However, a high level of concern has been raised about what standard is being used to determine commercial-grade facilities. This requirement has the potential to significantly increase providers' fixed costs and reduce the diversity of potential bidders. NESA also notes that 'commercial-grade' office infrastructure is highly variable in many suburban locations and particularly in regional and rural areas.

Recommendation:

- **The Department provides clarification of the standard or characteristics that would meet the definition of commercial-grade facilities.**

10. Panel refresh

NESA recognises that the Department reserves the right to make further approaches to the market during the term of the National Panel to appoint additional panel members to the national and sub-panels. Potential suppliers agree that any Panel refresh should be conducted on terms consistent with the New Employment Services DRFP and in accordance with the *Commonwealth Procurement Rules (CPRs)*.

Recommendation:

- **That Panel refresh processes include a streamlined application process for existing panel members with satisfactory performance and all KPIs.**

11. Employment Region business share tolerance

Potential suppliers have provided feedback in relation to bidding and nominating maximum and minimum business share for each licence in each Region. In previous employment services procurement processes bidders had the option of indicating tiers of market share aligned to various coverage scenarios e.g. at market share of between 10% and 20% we offer the following sites of X, X, X, at 21% to 30% we offer an additional 3 sites located at X, X, and X. Potential suppliers are requesting clarification if such "tier" bidding will be permitted in the NESM procurement process.

12. National business share tolerance

Potential suppliers support the aim of achieving diversity in the market and understand that a cap on market share **may** assist. There was also strong feedback that achieving the strongest potential panel must remain the primary objective.

Potential suppliers request further information including

- Detail of the rationale for setting the cap at 10% of the total national business share for any single provider (inclusive of related entities).
- How the cap will support the achievement of high performance across the life of the licence.

13. Direct Registration

For clarity can the Department confirm that participants who may not be in receipt of income support but eligible for Enhanced Services via direct registration will also be Outcome eligible?

14. Performance Framework

Potential suppliers strongly support the development of a comprehensive performance framework that appropriately measures success and drives continuous improvement and is informed by job seeker and employer service experience.

The Department indicates it will engage with stakeholders on specific elements of the Provider Performance Framework and welcomes stakeholder feedback and suggestions on the most effective ways to incentivise the policy intent of the model.

NESA is of the strong view that the most effective way to build a robust performance framework is to consult with the sector and key external stakeholders. In previous reform processes working groups were formed and evidence-based approaches were used to design and/or redesign employment services performance frameworks.

Recommendation:

- **A Performance Management Working Group comprising of diverse stakeholder representatives informs the development of the NESM Performance Framework.**

DEED of Standing Offer

1. Minimum Requirements for Maintaining Panel Membership

Potential suppliers' access to the External Systems Assurance Framework (ESAF) and all associated documentation is essential to facilitate well informed and considered bids for New Employment Services. It is not possible for potential suppliers to fully appreciate the scope of requirements and considerable financial undertaking needed to comply with the ESAF from the information within the DRFP. NESA notes the ESAF was not evident on the Department of Education, Skills and Employment's employment services purchasing page or the Department's broader website.

2. No Guarantee or Exclusivity

The employment services sector acknowledges that there may be exceptional circumstances where variation to the number of licences in a particular Region may be of benefit. Notwithstanding the absolute discretion afforded to the Department through clause 12, the sector notes the potential instability and confusion for job seekers and employers that may be associated with variation to the number of licences and the introduction of short-term licences which will impact incumbent panel members' market share.

It is the position of the sector that short-term licences should only be introduced in exceptional circumstance with existing panel members consulted prior to finalising the decision and the execution of licences. Exceptional circumstance should include substantial change to the job seeker caseload and that there is independent evidence the Region can sustain an additional panel member without jeopardising existing panel members' financial viability.

- Variations to the number of longer term licences should also include an opportunity for current providers to review their existing office footprint in line with proposed change to market share arrangements (similar to the process that took place during the implementation of the New Employment Services Trial).

3. Issuing a Work Order

A template Work Order was not provided with the DRFP raising questions about the detail and requirements that are proposed for inclusion. NESA received a range of feedback regarding Work Orders and the need to ensure appropriate regard for operational challenges such as providing adequate notice and a timeframe for the establishment and commencement of services.

4. Use of interpreters

The use of accredited interpreters to support genuine participation and informed choice is acknowledged. NESA notes that costs associated with the provision of interpreters can be considerable particularly for CALD specialists or generalist caseloads with a high proportion of CALD job seekers.

Recommendation:

- **To support access to interpreters NESA recommends that interpreter services are eligible purchases from the Employment Fund.**

5. Providers Conduct

Clause 16.3 states that ‘the Provider must not have a remuneration or rewards structure that encourages its Personnel to act in a manner that is inconsistent with the objectives of the Services as specified in any request for proposal for this Deed or in clause 83.’

NESA acknowledges that any remuneration or structure designed with the intent to encourage sharp or fraudulent behaviour has no place in employment services. However, we note that for over two decades pay for performance funding models have been used in employment services to drive outcomes. Similarly, there are many different remuneration and reward structures that are designed to encourage and reward high performance. NESAs received feedback from providers around the various mechanisms in place to ensure a holistic view of performance is considered including factors such as service quality, integrity, administrative accuracy as well as service outcomes.

- The sector request further detail on what the Department considers are characteristics of the remuneration or rewards structure it would deem as encouraging Personnel to act in a manner that is inconsistent with the objectives.

6. Joint Charter of Deed Management

NESA notes the Joint Charter of Deed Management was referenced but not included in the DRFP. The significant reform of employment services provides an opportune juncture for providers and the Department to collaboratively review, revitalise and recommit to an updated Joint Charter of Deed Management.

7. Sample Reviews

The DEED of Standing Offer includes clause 37 enabling the Department to conduct sample reviews of claims for payments made by the Providers and using the results to extrapolate findings across all claims within the relevant type or class of claims for the sample period and apply a remedy as indicated. While acknowledging the sampling technique will be verified by qualified statistician or actuary as being statistically valid producing results with high confidence, clause 37.2 indicates the Department may use any form of sampling.

NESA received feedback indicating concern that such a process denies providers the right of reply and options to defend individual claims. In addition, it was of great concern that targeted sampling would be used rather than random samples; potentially delivering an artificially higher invalid claim rate to be applied across the entire claim type. As noted in feedback a statistically valid methodology does not necessarily mean fair and reasonable.

NESA welcomes clause 37.5 which states the Department must disclose the methodology used in a Sample Review to the Provider before exercising the Department's rights under clause 37.3; however the clause gives no option for the provider to object to the methodology, seek adjustments or rights to review and provide documentary evidence for claims individually rather than be subject to sampling.

8. Insurance

NESA notes that insurance requirements are noted in the Deed of Standing Offer however the amounts required are not yet specified. The required level of coverage has a material impact on the cost of insurance and ability to financially model viability of the contract to enable sound bid decisions.

- NESAs requests that the insurance requirements are published on the employment services purchasing website as soon as possible to enable potential suppliers to source quotes.

9. Personnel

NESA supports the intent of clause 53.2 which seeks to ensure personnel who have previously been dismissed from another employment services provider and had their access to the Department's IT systems terminated due to their conduct are not re-engaged in the delivery of services. NESA recognises that considerable screening processes are currently used and while the intent of the clause is supported there are a range of complex issues involved in reference checks, which the Department is also subject to. While not the focus of this submission a more substantive sector-led solution has been developed.

10. Information provided to the Department

NESA recognises the importance of integrity in the delivery of employment services. Furthermore, NESA agrees and supports efforts to ensure true, accurate and complete information is provided to the Department.

However, while noting the absence of guidelines to contextualise the requirements, on face value NESA considers it problematic that clause 17.1 (b) requires providers to take all necessary steps to verify the truth, completeness, and accuracy of any information.

Recommendation:

- **NESA recommends this clause is amended to read 'to take all reasonable steps'.**

11. Variation of Deed

NESA notes that clause 73 outlines that no variation of the Deed is binding unless it is agreed in writing and signed by the Parties; except for action the Department is expressly authorised to take elsewhere in this Deed.

NESA received considerable feedback regarding the considerable scope of authority the Department has to make variations, make determinations and implement change at its absolute discretion. As an observation the jobactive deed contains 36 such clauses while the NESM Draft Deed of Standing Offer includes 47 or 30% more instances of such clauses.

12. Employment Fund

The description of the Employment Fund in the Statement of Requirements for Enhanced Services states 'Providers can claim reimbursement for payments that genuinely support employers and assist job seekers to achieve the goal of employment.' This is a very different description than has been traditionally used in relation to the Employment Fund. NESA also notes that the absence of guideline clauses in the Deed of Standing Offer related to the use of the Employment Fund raises questions on whether it is intended to materially alter eligible Employment Fund expenditure.

The Employment Fund is an important resource and is essential to the provision of tailored services to meet job seekers and employers' diverse needs. Clause 145 in part states that the Employment Fund can be used for "Reimbursement of purchases of goods or services, or Wage Subsidies (excluding the Youth Bonus Wage Subsidy), that genuinely assist Participants to build experience and skills to get a job".

The Employment Fund is essential to enable providers to meet the requirements of clause 132 Non-vocational assistance and interventions which outlines the specialist interventions needed by some participants such as parenting courses, cultural services, personal development, drug or alcohol treatment, counselling; and/or medical or health related services.

Clause 132.3 states that the Provider must pay any Subcontractor or third-party engaged to deliver Non-vocational assistance and intervention and may be able to claim reimbursement through the Employment Fund in accordance with clause 145. This clause is silent regarding the capacity of providers to deliver specialist interventions where needed via a related entity and claim reimbursement through the Employment Fund, as is currently permissible.

NESA strongly argues that narrowing the scope of permissible Employment Fund expenditure would be contrary to the stated intent of the model and further erode investment in tailored services to the most disadvantaged job seekers. We note the success of the New Employment Services Trial was in part due to the flexible use of the Employment Fund for a range of interventions to address non-vocational and employability skills as well as vocational skills, work experience and wage subsidies. Other than Enhanced Services case management, all costs associated with interventions in participants' Job Plans including Mutual Obligation and Activity requirements (inc. checks) should be reimbursable.

- NESA requests that information regarding the intended guidelines for the Employment Fund is released

13. Liquidated damages

Clause 62.1 details the right of the Department to apply liquidated damages where specified events occur however the amounts are not available in the DRFP and as such feedback as to the reasonableness of the damages cannot be given. Part (b) outlines liquidated damages may be claimed as a result of a provider making invalid claims at any time in the relevant financial year. The amount of liquidated damages (yet to be specified) is dependent on the number of invalid claims with the lowest category being 100 – 149 invalid claims in a financial year, which for some organisations could represent a less than 1% error rate.

NESA recognises that integrity of the system is critical however also recognises that invalid claims occur for a variety of reasons. Millions of transactions are conducted in employment services every day and human and administrative error does occur. NESA respectfully notes that Providers are not compensated for damages incurred from Department led contract/program management human or system errors.

- Feedback suggests that rather than being based on fixed numbers, invalid claims as a proportion of all claims would provide greater equity in the treatment of small, medium and large organisations.

14. Service Guarantee

A draft Service Guarantee was not made available for comment. Potential suppliers would like the opportunity to contribute to the development of the Service Guarantee and assist in shaping the expectations that arises from it.

15. Employer Engagement

Potential suppliers request clarification in relation to clause 87 Employer engagement which (in part) states in order to provide a simpler and more effective recruitment service to Employers, the Provider must engage with and support Employers: (a) in the Locations in which the Provider has a Licence to deliver Enhanced Services.

Can the Department confirm that this clause does not prevent Providers engaging and assisting employers in Regions for which a Provider does not have a Licence to deliver Enhanced Services? Limiting Providers to work within Regions would limit capacity to place job seekers in work, for example with employers in adjoining Regions, in employment involving fly in fly out, or to locations they are willing to temporarily or permanently relocate to e.g. harvest areas.

16. Early School Leavers

Clause 107.1 refers to requirements for Participants who are Early School Leavers, and states (in part) Providers must provide Activities for up to 25 hours per week in accordance with any Guidelines. NESA has received substantial feedback regarding the withdrawal of separately funded Employability Skills Training for Enhanced Services participants and particularly for young people. This represents a reduction in investment in those most disadvantaged, contrary to the stated intent of the NESM and the conditions of service conducted during the trial.

Recommendation:

- **Separately funded Employability Skills Training is made available to Early School Leavers as it is to digital employment services participants.**

17. Self-help Facilities for Participants

Clause 110 outlines the Self-help Facilities that the provider must provide in accordance with any guidelines:

- (a) make available at each Site, Self-help Facilities that any Enhanced Services or Digital Services Participant can access for free for the purpose of accessing:
 - (i) Digital Services, including self-reporting, undertaking job searches, and tools and information about the best ways to look for and find Employment,
 - (ii) local, regional, and national labour market information, in particular the Labour Market Information Portal and Job Outlook websites,
 - (iii) career information, in particular the National Careers Institute website; and
 - (iv) information on training pathways
- (b) as necessary, provide support to utilise Self-help Facilities; and
- (c) establish and implement controls to ensure that Self-help Facilities are used appropriately, including in accordance with the Cybersafety Policy

There is strong objection to clause 110 as it relates to the unfunded provision of services by Enhanced Services Providers to Digital Service Participants. This requirement places significant and unreasonable additional operating costs on Enhanced Service Providers.

As a fundamental principle the Department has stated that it will ensure that job seekers are assessed and deemed suitable for Digital Employment Services including being digitally literate, having access to technology and being able to self-manage their pathway to employment. Digital Employment participants should be directed to contact the Digital Services Contact Centre if they require support and could potentially access Self Facilities at Services Australia.

The Digital Service caseload will be larger than the Enhanced Services caseload and could potentially more than double demand for Self-Help facilities. This would require Providers to increase Self-Help facilities, support staff and potentially office space without compensation.

Recommendation:

- **Remove requirements for Enhanced Service Providers to provide access to Self Help Facilities, advice, and support to Digital Employment Participants without compensation; or**
- **If it is deemed necessary to offer Digital Service Participants access to Self Help Facilities advice and support then Providers should be paid an annual fee per job seeker based on the Regions caseload, and**
- **The frequency and level of support sought by Digital Service Participants from Enhanced Services should be considered in the evaluation of Digital Employment Services.**

18. Full Outcomes

For clarity potential suppliers are requesting confirmation of the definition of Full Outcome. The DRFP – Appendix 1 Enhanced Services states that a Full Outcome is payable where they (job seekers) “earn sufficient income to receive no income support at all”. Traditionally Full Outcome has been defined in relation to those in receipt of income support generating sufficient income from Employment or Unsubsidised Self-Employment or a full-time apprenticeship or traineeship or part-time apprenticeship or traineeship **to have caused the Fully Eligible Participant’s Basic Rate to cease.**

The definition of '**Full Outcome**' for the duration of a 4 Week Period, 12 Week Period or 26 Week Period in the NESM Deed of Standing Offer refers to generating sufficient income or hours **as specified in any Guidelines.**

Potential suppliers would like clarity regarding the definition of Full Outcome and confirmation on whether there is any change to requirements for a Full Outcome as compared to current definitions under jobactive.

Potential suppliers would also like to understand the rationale for specifying the conditions for Full and Partial Outcomes in the guidelines rather than in the DEED as has previously been the case.

19. Work for the Dole

NESA recognises that requirements for Work for the Dole have been reduced from 6 months to 2 months for Enhanced Services. However, NESA has received feedback that the reduction in funding for Work for the Dole from \$1000 to \$500 for an individual place will put strain on hosts and providers alike, particularly where several job seekers cycle through an individual place. In such cases a Risk Assessment, induction, safety equipment and training may all need to be repeated.

Recommendation:

- **The base funding for Work for the Dole is increased**
- **A supplementary payment is made for every additional job seeker commenced in a place**

The Deed of Standing Offer states in clause 121.1 (c) a Provider may fill Work for the Dole Placements and Work for the Dole Project Places which have been arranged by another Provider and advertised on the Department's IT Systems.

However in clause 155.2 Work for the Dole Placement Fees the footer states "Note: To avoid doubt, the Department will not pay a Provider a Work for the Dole Placement Fee for the placement of a participant on the caseload of another Enhanced Services Provider in a Work for the Dole Place".

Furthermore, this clause also states that in accordance with any Guidelines, the Provider must pass on to the Host Organisation the full amount of any equivalent payment that the Provider receives from another Enhanced Services Provider.

Collaboration amongst Providers is essential to support hosts and offer a range of activities to job seekers. Unless providers can be reimbursed for any of the costs they occur for arranging and managing Work for the Dole places, such collaboration will be lost.

Can the Department confirm if?

- The referring Provider can claim the Work for the Dole Fee for a participant referred to another Provider's Work for the Dole Activity, and
- The receiving Provider is permitted to retain part of a fee they receive from another Enhanced Provider in relation to a Work for the Dole place they arranged, passing on the residual (at least 50%) to the Host Organisation.

20. Indexation

NESA welcomes the inclusion of indexation of selected Fees within the Deed of Standing Offer making provisions for an increase of 6.8% at the end of each three-year period following 1 July 2022. However, we note that the Employment Fund has not been included in the list of payments subject to indexation. In addition, the hourly rate for professional services claimable through the Employment Fund has remained static since 2009. There is no doubt that the goods and services that the Employment Fund will be used for will increase in cost and without indexation the support provided to job seekers and employers will be eroded. NESA also notes that the last indexed fee increase in jobactive was applied in January 2018.

21. Enhanced Services Payment Model

Potential suppliers acknowledge the provision of the New Employment Services Model Financial Viability Analyses— Summary of Findings and the Enhanced Services Outcome Payment Ratios to assist them to assess the NESM opportunity. However, strong feedback is that the information is insufficient in scope and detail to construct a financial model that can be confidently relied upon.

NESA understands that the Department engaged KPMG Australia (KPMG) to undertake a series of financial viability analyses to test a range of payment structures and scenarios, to understand what the impact policy options could have on provider viability. We are also aware that some providers participating in NEST collaborated with the analyses providing access to their financial records to support the evidenced-based development of the payment model. Providers have raised a number of questions and concerns regarding the analysis which are as follows:

1. The summary acknowledges that the Monte Carlo methodology used by KPMG does not necessary reflect real world operation where multiple factors can vary at once and not in the same direction.

NESA has consulted with members who participated in the KPMG analysis and predominantly report that the findings do not resemble their position, particularly in relation to fixed costs. As such potential suppliers are keen to understand how the real-world analysis informed the development of the model.

2. The analysis summary under general findings states the modelling indicates the new model can achieve viability if providers replicate the outcomes achieved historically under jobactive for the more disadvantaged job seekers that will be included in their caseload under the new model.

To predicate viability on the capacity to place long-term unemployed and disadvantaged job seekers into employment at the same rate as a historic jobactive contract is unrealistic. The displacement of more skilled workers into the labour supply as a result of the COVID-19 pandemic and the increased competition in the labour market makes the possibility of achieving high volumes of outcomes even more remote.

3. On what basis were the providers who shared their financial records deemed representative?

For example, NEST only operates in two Regions and NESA understands the number of providers sharing their financial records was small. It is therefore difficult to understand on what basis such limited analysis could be used to confidently decide regional loadings are not required in the NESM payment model. There is a strong view that the loss of regional loadings will significantly impact services to disadvantaged job seekers across regional and rural Australia.

Recommendation:

NESA strongly recommends Regional loadings on all fees are reconsidered.

4. The summary provides analysis of viability predicated on fixed costs for small organisations maintained at \$0.4 million and large organisations at \$2.4 million but provides no definition of small and large organisations or information of what is included in those fixed costs.

To illustrate, the baseline scenario is a caseload of 2,600 at a ratio of 80:1 requiring at least 32.5 EFT which at the lowest award rate would mean salaries and on-costs alone would be in the order of \$2.4 million

NESA would like to know what assumptions on contract management and compliance costs informed the modelling given the significant resources involved in achieving and maintaining mandatory requirements particularly those related to quality, cybersecurity and contract compliance. NESA notes the costs involved in relation to cybersecurity accreditation are in the hundreds of thousands with a common range reported as being between \$300K and \$750K just to achieve initial accreditation.

5. A major recommendation from the I Want to Work report was to ensure early investment in job seekers to help break the cycle of disadvantage. The analysis indicates that providers would operate at a loss for the first nine months and not hit a positive return until 13 months with net profit not occurring until three years. NESAs assumes that this is an average scenario and, particularly in depressed labour markets, services would have to be subsidised for a longer period. It is essential that provider organisations are able to deliver a margin (surplus/profit) in order to reinvest in their people and services.
6. The Indicative Enhanced Services Outcome Payment Ratios released on the Department's website on the 5th July 2021 provides an indicative average ratio of the job seeker caseload that will be eligible for Moderate and High outcomes. The information is useful however, potential suppliers are requesting further detail to enable soundly constructed bid submissions. Potential suppliers at minimum request the following:
 - The range for each measure (overall) e.g. Proportion of the Enhanced Services caseload to attract a four-week Partial Outcome Payment in a given month at 'High JSCI' Average 0.1% - Range High is X – Low is Y
 - The average Enhanced Services Outcome Payment Ratios for Metropolitan Regions Only
 - The range for each measure for Metropolitan Regions e.g. Proportion of the Enhanced Services caseload to attract a four-week Partial Outcome Payment in a given month at 'High JSCI' Average 0.1% - Range High is X – Low is Y
 - The Enhanced Services Outcome Payment Ratios by Regional Regions Only
 - The range for each measure for Regional Regions e.g. Proportion of the Enhanced Services caseload to attract a four-week Partial Outcome Payment in a given month at 'High JSCI' Average 0.1% - Range High is X – Low is Y
7. NESAs understands that the KPMG analysis was conducted in the first half of 2020 and reviewed providers' financial records on the basis of their delivery of NEST. It is highly concerning that additional servicing requirements have been incorporated into Enhanced Services and at the same time resources and supporting programs such as EST have been removed from the model.

The reduction in resources for those most disadvantaged is in stark contrast to the arrangements for the most job ready job seekers who will be in the Digital Employment Services and who will experience an increase in investment compared to the jobactive arrangements. While NESAs strongly supports early intervention and efforts to ensure those recently unemployed do not slip into entrenched unemployment, the intent of the model was to address the imbalance and inadequacy of resources directed to those most disadvantaged.

NESAs has on a number of occasions voiced its concerns that Enhanced Services on face value has fewer resources than jobactive. At no time has this concern been refuted with evidence that would lead us to a different conclusion. NESAs recognises that the KPMG summary indicates a further review of financial viability at 18 months, however we consider that is far too late into the licence period.

Recommendation:

NESAs calls for a commitment to full and inclusive employment and urges that the payment model for Enhanced Services be reviewed to ensure it is viable and can deliver on the considerable expectations to do more for our most disadvantaged citizens from the outset of the service.

NESAs calls for full disclosure of modelling assumptions to ensure providers are able to model financial viability on a sound basis and avoid risk to organisations' sustainability through insufficient information and data on which to make informed decisions.

22. Employability Skills Training

NESA welcomes the Government's commitment to helping eligible job seekers (Digital Services, Enhanced Services, DES and TtW) develop their employability skills through training and work experience, to increase their prospects of finding and retaining employment. NESA and our members also welcome the expansion of Employability Skills Training to assist job seekers of all ages in addition to the young people previously benefiting from the program and strengthening the capacity of the program to deliver work experience.

Given the enhancements to EST it is very disappointing that while the most job-ready job seekers will receive access to a separately funded program, EST will only be available to other more disadvantaged job seekers on a fee-for-service basis. Access to EST will be further compromised by the decision that fees to cover Enhanced Services' job seekers EST participation cannot be reimbursed through the Employment Fund.

NESA has consulted with potential suppliers who have noted the following questions and issues:

Clause 6 requiring 'Use of Interpreters' is understandable however the costs of interpreters are significant and may potentially be more than what is paid per participant. Potential suppliers would like to know if any consideration has been given to the reimbursement of interpreter costs e.g. from the Digital Employment Services Employment Fund?

EST is a resource intensive program requiring training rooms and amenities for participants, and for Block 2 this may include access to specialised equipment and resources to deliver industry-based training. NESA has received significant feedback from Regional providers that in order to provide access to such facilities the program may not be viable without Regional Loadings.

Potential suppliers have noted that the restriction of referral of job seekers to their own entity EST program is counterproductive to the viability of the program and is likely to result in reduced diversity of the provider pool. In addition there are many labour markets with limited service options and these restrictions increase barriers to access. Concerns around conflict of interest and own entity referrals should be dealt with in other ways.

Effective delivery of EST can fast track job seekers' pathways to employment. A number of potential suppliers have provided feedback that job seekers who exit as a result of employment should be considered a completion and paid accordingly.

Potential suppliers would like clarity in relation to the circumstances in which on-line delivery is permitted. This information may have significant impact on innovative technology-enabled approaches as well as efficiency. Potential suppliers would like data on the number of providers expected to operate in each region. This, along with the (published) historical commencement numbers, will support providers to make informed business decisions around viability and bid strategy.

Potential suppliers advocate that all services and programs including EST contain provisions for indexation to ensure they remain viable over time.

23. Career Transition Assistance

Potential suppliers welcome the opportunity of continuing the Career Transition Assistance support for mature job seekers to assist them prepare for a return to productive employment.

- Potential suppliers raised concern regarding changes to the terms of trade which as a result of the omission of a Regional loading (\$450) per placement has seen a decline in funding compared to the current model in Regional areas from \$2250 per participant to \$1800 per participant. Potential suppliers noted the limitation that the fee-for-service arrangement will place on DES participants access to the program which will reduce assistance for mature people with a disability to reengage in the labour market.

- Potential suppliers noted that it would be beneficial to install CTA as the default 6-month intensive activity for Enhanced Services job seekers aged 45 and over.

Clause 6 requiring 'Use of Interpreters' is understandable however the costs of interpreters are significant and may potentially be more than is paid per participant. Potential suppliers would like to know if any consideration has been given to the reimbursement of interpreter costs?
- A number of experienced CTA providers noted concerns with the limitations on referrals to their own CTA programs. While the reasons for managing perceived or potential conflict are highly understandable, underuse of programs by some providers will result in CTA being locked out of referrals. Access barriers are unfair to participants, particularly where there are no other CTA programs running in the area and the cap undermines job seeker choice. There are significant benefits from service continuity and familiarity particularly in relation to positive engagement, activation and cohesive approaches to employment goals and pathways.
- There appears to be a reference to a 'handover meeting on completion of CTA with Enhanced Services Providers where relevant'. In the current contract, these meetings are a mandatory requirement (warm handover meetings with job seekers' employment consultants). Will warm handover meetings and offerings of post placement support continue to be a mandatory component in the new contract? Clarity is required to inform design service delivery models.
- Lack of detail and definition on the CTA KPIs (which are also present in the current contract) and the absence of set benchmarks makes it challenging to monitor performance. Also, the Department's monitoring and audit processes are not clear and there is a distinct lack of communication when it comes to performance monitoring in the current contract.

Concerns have been raised that split payments (commencement and completion payments) will disadvantage providers relative to the current model, where funding is based on commencements only. Costs and resources required for delivery are incurred at the beginning of and for the entirety of the course. Providers will only receive full (\$1800) funding for those who complete appropriate hours, noting the costs of delivery are not reduced when clients exit early.

Effective delivery of CTA can fast track job seekers' pathways to employment. A number of potential suppliers have provided feedback that job seekers who exit as a result of securing employment should be considered a completion and paid accordingly.
- Potential suppliers would like clarity in relation to the circumstances in which on-line delivery is permitted. This information may have a significant impact on innovative technology-enabled approaches as well as efficiency.

Potential suppliers would like data on the number of providers expected to operate in each region. This, along with the (published) historical commencement numbers, will support providers to make informed business decisions around viability and bid strategy
- Potential suppliers seek clarification in relation to the Placement Management Services Fee of \$1000 for each NWEF placement, including seeking assurance that they will receive a Provider Fee, and be reimbursed for the Host fee, strictly on the basis that the job seeker commences.