



Disabled
People's
Organisations
Australia

Submission

Department of Social Services (DSS)

**New Disability Employment Service from 2018
Discussion Paper**

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Publishing Information

'Disabled People's Organisations Australia (DPO Australia) Submission to Department of Social Services in response to the *New Disability Employment Service from 2018 - Discussion Paper*, December 2016.

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Acknowledgement

DPO Australia welcomes the invitation from the Commonwealth to represent people with disability on the Disability Employment Services Reform – Disability Employment Reference Group.

We acknowledge with appreciation the funding support provided by the Department of Social Services (DSS) to enable four representatives of DPO Australia to prepare and actively participate in the meetings of the Disability Employment Reference Group.

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1. Disabled People's Organisations Australia (DPO Australia)

Disabled People's Organisations Australia (DPO Australia) is an alliance of four national DPOs in Australia. DPOs are organisations that are led by and constituted of people with disability.

The key purpose of the DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities.

DPO Australia was founded by, and is made up of four national population specific and cross-disability DPOs that have been funded by the Australian Government to be the recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

The four DPO Australia members are:

[Women With Disabilities Australia \(WWDA\)](#) is the national cross-disability DPO for women and girls with all types of disabilities in Australia. It operates as a transnational human rights organisation and is run by women with disabilities, for women with disabilities. WWDA's work is grounded in a human rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

[First Peoples Disability Network Australia \(FPDNA\)](#) is the national cross-disability DPO representing Aboriginal and Torres Strait Islander people with disability and their families. FPDNA utilises a range of strategies in its representative role, including through the provision of high-level advice to governments, and educating the government and non-government sectors about how to meet the unmet needs of Aboriginal and Torres Strait Islander people with disability.

[People with Disability Australia \(PWDA\)](#) is the national cross disability rights and advocacy organisation run by and for people with disability. Working within a human rights framework, PWDA represents the interests of people with all kinds of disability. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. It also has a large associate membership of other individuals and organisations committed to the disability rights movement.

[National Ethnic Disability Alliance \(NEDA\)](#) is the national peak organisation representing the rights and interests of people from Culturally and Linguistically Diverse (CALD/NESB) people with disability, their families and carers throughout Australia. NEDA advocates at the federal level so that CALD/NESB people with disability can participate fully in all aspects of social, economic, political and cultural life.



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)



First Peoples
Disability Network
Australia

“People with nearly any sort of disability label can, in fact, work productively, when provided the environment, training, technology, or other supports tailored to the person”.

David Mank, Journal of Vocational Research, 29, 2, 2008

2. Introduction

DPO Australia welcomes the opportunity to provide this preliminary submission in response to the ***New Disability Employment Services From 2018 — Discussion Paper***, and following discussion with the ***Disability Employment Reference Group***.

It should be noted that in order to meet the consultation timeframe, this is a preliminary submission that is purposively brief and candid. It is provided on a *confidential without prejudice* basis to DSS. We may provide further detail in a final submission following discussion and clarification with members and / or the Department of Social Services (DSS).

DPO Australia supports the introduction of a more open Disability Employment Services (DES) market that offers;

- greater participant choice and control;
- recognition for improved employer engagement;
- opportunities for higher performing providers to expand, and funding consequences for lower performing providers.

Our support is contingent on a substantial investment by the Commonwealth for people with disability to get the information and support they need to make an informed choice. Reforms must include a closer examination of support practices that achieve high rates of employment outcomes to ensure that such reform builds upon good practice to change DES from a low-performing program to a high-performing program.

3. General Comments

Employment is a human rights issue

The importance of implementing effective reforms to DES cannot be underestimated. Employment assistance to support people with disability to participate in the workforce is a human rights issue^{1, 2} and critical to achieving the full inclusion of people with disability in Australian society.³

Employment participation is associated with our identity and self esteem, our physical and mental health, and the means to live a *good life* above an existence of poverty⁴ and social

¹ United Nations Convention on the Rights of Persons with Disabilities. Article 27. <https://www.un.org/disabilities/convention/conventionfull.shtml>

² Office of the United Nations High Commissioner for Human Rights. (2012). Thematic study on the work and employment of persons with disabilities. http://www.ohchr.org/Documents/Issues/Disability/A-HRC-22-25_en.doc

³ Council of Australian Governments. 2010-2020. National Disability Strategy. Second Implementation Plan Driving Action 2015–2018. <https://www.dss.gov.au/disability-and-carers/programs-services/government-international/national-disability-strategy-second-implementation-plan> “The vision of the strategy is for ‘an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens’.

⁴ Australian Bureau of Statistics, Survey of Disability, Ageing and Carers, 2012, Summary of Findings (Cat. No. 4430.0), Table 8.1. The median gross weekly income for people with disability (\$380) is about half that of people without disability (\$700).

exclusion.

We can work with the right support

More than sixty years of research and demonstration of employment support for people with disability has found that with the right type and level of support, people with disability have the capacity to work in the open labour market on the same basis as any other people.⁵

The ability to access employment support is necessary but not sufficient. To achieve employment outcomes, people with disability need **evidence-based** support provided by skilled staff, delivered with fidelity to their human rights and dignity as citizens. In simple terms, there is an “art and science” to providing effective *person-centred* employment support that results in high rates of employment outcomes. It is this level of support we expect to achieve from DES.

Poor employment rates

The reported employment rates of people with disability across almost two decades continue to show little change, with a significant gap in comparison with people without disability.

The 2015 Australian Bureau of Statistics, Survey of Disability Ageing and Carers 2015⁶ reports that 48.1% of people with disability are employed. This is up 1% from 1998, but down 1.9% from 2009. This compares to 74.6% of people without disability employed in 2015.

Further, an estimation of the 2014-15 labour status of people with disability accessing disability services (Commonwealth, State, and Territory funded disability support services) is that 13.5% of people with disability reported work in the open labour market. This is down from 19.8% reported in 2003-04.⁷

People with disability who face intersecting barriers to employment experience even lower rates of workforce participation. For example, culturally and linguistically diverse (CALD) people with disability have significantly higher unemployment rates and lower labour force participation rates when compared to non-CALD people with disability.⁸ Women with disability are less likely to be in the labor force compared to men with and without disability and compared to women without disability.⁹ Aboriginal and Torres Strait Islander men and women with disability of working age have lower employment rates than their non-Indigenous counterparts.¹⁰

This trend in employment participation rates means that we cannot continue with the status quo of the current system of employment support and that DES reform needs to be

⁵ David Mank, Alderbrook. Journal of Vocational Research, 29, 2, 2008

⁶ 4430.0 - Disability, Ageing and Carers, Australia, (2015).

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4430.0Main+Features452015?OpenDocument>

⁷ Australian Institute of Health and Welfare. Disability Support Services 2003-04 & 2014-15 and associated Disability Data Cubes. <http://aihw.gov.au/disability-data-cubes/>

⁸ NEDA & FECCA Joint Submission to the Australian Human Rights Commission's 'Willing to Work Inquiry', December 2015, Available at: <http://www.neda.org.au/index.php/latest/202-neda-fecca-dec-2015>

⁹ ABS, Survey of Disability, Ageing and Carers, 2012 (CAT. No. 4430.0)

¹⁰ Closing the Gap Clearinghouse, February 2014

substantial to achieve positive growth in the employment participation rates of people with disability.

Intersectionality and employment

People with disability are not a homogenous group. Experiences of employment barriers, disadvantage and discrimination will be specific to the multiple dimensions of a person's identity, such as their gender, age, sexual identity, race, cultural background and ethnicity. It is critical that specific effects of this intersectionality are identified and addressed to ensure that DES can provide the right processes and supports to increase employment rates for all people with disability.

Poor average DES outcomes

DES has repeatedly been unable, on average, to deliver a level of employment outcomes that Australians with disability need and have a right to expect.

The DES Evaluation report¹¹ found that, on average, approximately 4 out of 10 jobseekers commencing with DES achieved a job placement¹², and on average, a little more than 2 out of 10 got a job that lasted at least 26 weeks.¹³

About 66% of DES participants in work at 26 weeks, remain in work until at least 52 weeks¹⁴. This means that, on average, about 1.5 of every 10 jobseekers entering DES get a job that lasts at least 52 weeks.

There has been no evaluation of the average or range of weekly hours of work by DES participants who got a job, or the average or range of weekly wages earned. It is unclear from the reform discussion paper what impact DES is having on welfare reform objectives, including government budget initiatives to tighten Disability Support Pension (DSP) eligibility, and increase mutual obligations to some people with disability in receipt of the DSP.¹⁵

DES achieves, on average, low job placement rates and incurs a high level of job loss for those who do get a job, and this results in low rates of sustainable employment outcomes. Consequently, DES currently involves a generous expenditure and considerable effort for little employment outcome benefit for people with disability.

We acknowledge that there are quality exceptions within the DES program with some DES providers achieving well above the DES average outcome rate. It is our view that these higher performing providers should be the subject of research by the Commonwealth to determine the link between support practice, support cost, and higher rates of sustainable employment outcomes. The finding of this research should form the basis of expansion and replication of evidence based support and be supported by DES reform and policy.

Risk for people with disability

¹¹ Australian Government Department of Education, Employment and Workplace Relations. Evaluation of Disability Employment Services 2010–2013. Final report

¹² DES Evaluation. Job placement results. DES-DMS, 40.7%; DES-ESS, 40.1%

¹³ DES Evaluation. 26-week employment outcome results. DES-DMS, 23.0%; DES-ESS, 22.0%

¹⁴ DES Reference Group Meeting Paper (not published)

¹⁵ 2014 Federal Budget introduced compulsory requirements for DSP recipients under age of 35.

The risk of requiring people with disability with a mutual obligation to seek work, or offering people with disability without an obligation to seek work, to get such support from a program that achieves low average outcomes, is to put the majority of participants through an experience of failure.

We understand that there are no guarantees of getting a job, however, the prime objective of DES should be to ensure that we are building skills and capacity of people with disability to move into open employment with the right supports they need to maintain employment. Instead, with the current low level of outcomes provided through DES, often the assistance provided through DES results in setting up people with disability to fail. The DES program should be offering, as a matter of course, a program of labour market assistance that is more likely to succeed than fail.

Current data on DES performance shows that six out of ten DES participants get a job placement. Two of the four that get a job, experience job loss within six months, and more lose within 12 months.

People with disability need a DES program that provides an average job placement rate above 50% at 7, 8, or 9 out of every 10 participants. Average job sustainability rates should also be above 50% at 7, 8 or 9 out of every 10 participants keeping a job for at least 12 months. We need to **raise the bar** in regards to both the quality and outcome performance of the DES program if it is to address the current low rates of employment participation experienced by people with disability.

4. Discussion Paper & Reference Group Agenda Items

4.1 Building Employer Demand (Chapter 8)

*“Ultimately, the success of linking job seekers with work is as much about meeting employers’ needs as it is about serving job seekers”.*¹⁶

Meeting employer needs is fundamental to the successful job placement and retention of job seekers with disability.

It is critical that DES providers have the specialist skill sets and competencies required to engage with employers which results in high rates of job placement and retention to the mutual benefit of employers and job seekers with disability.

The focus of DES must move to a *dual customer approach* which seeks to meet the mutual needs of jobseekers and employers. The DES program must see its purpose, success and viability linked first and foremost to the attainment of high rates of sustainable job placements for people with disability.

Sustainable employment for people with disability is, to a large extent, determined by an effective *job-participant match*, that is, an effective match between the operational needs of a business, with the choices and strengths of a job candidate. An effective *job-participant match* is measured by the mutual benefit this provides to the employer and the job seeker.

¹⁶ Richard G. Luecking, Emerging employer views of people with disabilities and the future of job development. *Journal of Vocational Rehabilitation*, 29 (2008) 3-13.

Conversely, strategies to encourage employers to hire people with disability based on *charitable appeals*, or selling job seekers as *better than*, are not meaningful or successful long term employment engagement strategies.

A focus on meeting the operational needs of business provides the strongest basis for successful and sustainable employment outcomes for people with disability. We also know from the research that employer attitudes towards jobseekers with disability tend to positively change through exposure to experiences of quality support when hiring people with disability.¹⁷

Recommendations

It is our recommendation that the Commonwealth should undertake an examination of the current employer engagement strategies being used by the highest performing DES providers to build a knowledge of best employer engagement provider practice to inform future provider eligibility requirements for DES.

It is also our recommendation that DES Reform needs to take a *more direct* strategy with the proposed employer nominated initiatives. The Australian Human Rights Commission (AHRC) report, *Willing to Work* states that its recommendations:

“call upon government to commit to lifting the labour force participation rates of people with disability over set timeframes, establish targets, plan actions, publicly report on progress and build community awareness to address stereotypes and discriminatory practices. Recognising governments as major employers, a range of recommendations address employment discrimination in the Australian Public Service (APS) as well as in state and territory public services.”¹⁸

DPO Australia believe that employer nominated initiatives could give practical effect to the AHRC recommendation to lift labour force participation rates through affirmative action strategies.

This moves the DES reform proposal from the level of a *trial* to the level of a *commitment* to increase the rate of employees with disability by private and public employers across small, medium or large enterprises.

Employer nominated initiatives could include:

- A commitment to lift the proportion of employees with disability;
- The setting of voluntary targets over a set time period;
- An action plan to achieve the voluntary target;
- A public report on progress, and lessons gained from plan implementation.

¹⁷ B. Hernandez, C. Keys and F. Balcazar, Employer attitudes towards disability and their ADA employment rights: A literature review, *Journal of Rehabilitation* 16 (2000), 83–88.

¹⁸ Australian Human Rights Commission 2016. *Willing to Work*. National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability

4.2 Driving greater competition and contestability (Chapter 4)

“Access to quality services will be a prerequisite for effective choice”¹⁹

DPO Australia supports proposals to create a more open and competitive provider market. The success of these proposals is, however, dependent on:

- how efficiently the market can expand and grow quality providers, and exit poor performing providers, and
- the quality of information and support provided to participants to make an informed choice to drive market quality and outcomes through a *vote with your feet* effect.

We support reform proposals to:

- remove restrictions which limit participant choice of provider,
- provide participants with information, support and control to help them make an informed choice of provider,
- enable higher performing providers to grow and expand to more employment service areas and labour market regions,
- exit poor performing providers from the market,
- remove prescribed market share levels to support the right of participant choice,
- continue the availability of specialist providers, and,
- reduce regulatory burden.

Provider Panel

DPOA supports the proposal to establish a provider panel with a set of minimum eligibility criteria for organisations to provide employment support to people with disability; and which allows greater flexibility for new providers to enter the market.

The minimum panel eligibility requirements for DES provider performance ***needs to be set high if DES reform is to improve current average program outcomes***. A star rating percentage performance for a provider contract below “0” should result in a provider being put on notice that continued panel eligibility requires demonstrated improvement to above “0” in 12-18 months time.

Adjustments to the required percentage benchmark (i.e. 0%) could be made in the future to accommodate any increase in program average performance. Taking into account the current low DES average performance, we would recommend a DES contract with a below average star rating percentage (i.e. below 0%) to be given limited access to expansion opportunities, and restricted and conditional access to continued DES panel eligibility.

Further, the panel should set minimum job placement, 26 week outcome and 52 week sustainability benchmark rates (weighted for different locations, and job seeker characteristics) for continued panel eligibility. DES providers performing below benchmark outcomes should be given limited access to expansion opportunities, and conditional access to continued DES panel eligibility pending improvement within 12-18 months.

¹⁹ Harper Competition Policy Review

Panel members that demonstrate above average star ratings (i.e. above a “0” star percentage rate), and who achieve above benchmark employment outcomes for job placement, 26 week outcomes and 52 sustainability rates should be permitted to maintain current DES panel eligibility, and expand into new employment service areas or labour market regions.

The panel should be open to new providers as frequently as possible, with public notice, when there is an identified gap or failure in the market, or when an organisation provides a compelling proposal that would enhance the performance of the market.

Panel members should be reviewed every 18 months on the basis of star ratings, employment outcomes (i.e job placement, retention, sustainability), outcomes by disability (i.e job placement, retention, sustainability), and an equity of performance outcomes across gender, age, CALD and Aboriginal and Torres Strait Islander participants.

Performance should be measured against contract claims. That is, if a panel member is operating on the basis of a *generalist* we should expect to see a diversity of participant characteristics (i.e. disability type, age, gender, CALD, indigenous), above a 0% star rating, and employment outcomes above benchmark rates across each of these groups. If a panel member is operating as a *specialist* we should expect to see a star rating percentage above a 0% star rating, and employment outcomes above benchmark rates for the targeted group.

New panel members entering the market should be given up to three years to demonstrate performance quality of above a 0% star rating percentage, above benchmark outcome rates for job placement, job retention and job sustainability. There should be a review at 18 months in which providers must demonstrate satisfactory progress.

Single Contract

DPO Australia **does not** support the collapsing of the two DES sub programs (i.e. DMS and ESS) into one single program or contract. It is not in the best interests of job seekers with disability to presume that all DES providers have the capacity to work across both the ESS and DMS populations with competency and high outcome achievement.

The DES evaluation found, for example, that few DES providers had the competency to successfully assist people with significant intellectual disability to achieve sustainable open employment.

We are concerned that current DES arrangements do not encourage volunteer participants and/or those with higher support needs to commence in DES; and that there is narrow competence in the DES market to support job seekers with disability who require direct engagement, customised job search, explicit job training, and long term ongoing support.

Maintaining two sub-programs may still include:

- a single contract for providers seeking to work with both program populations - but incorporating policy differences where required;
- choice of generalist or specialisation;
- a Panel to approve providers to enter the market, expand better performers, and impose consequences for poor performance;

- maintaining a separate sub program for people with ongoing, high support needs who require explicit assistance in finding and keeping a job, and long term ongoing support is likely to be required;
- an examination of participant characteristics of those currently in receipt of ongoing support in the ESS program. This should refine which participants *actually* require long term ongoing support to keep a job in the open labour market. This examination could reform eligibility requirements for an ongoing support program, and address the large numbers of participants currently exiting the ESS program before an ongoing support assessment;
- an examination of best practice support being used by high performing ESS providers across disability type, population group and labour market characteristics;
- a seamless link between the NDIS (i.e School Leaver Employment Supports), and a DES ongoing support sub program;
- an expectation that many potential participants will require a direct engagement by providers at schools, in the NDIS, and in the community, rather than a reliance on a referral from Centrelink.

A significant advantage of improving a dual DES program is to limit ‘*creaming and parking*’ of jobseekers. A broader program is likely to increase the opportunity for providers to focus on jobseekers with less impairment, less support need, and able to fit standardised job vacancies. A well defined program for people with ongoing, very high support needs will limit the capacity for providers to ‘*cream or park*’ jobseekers in order to achieve employment outcomes.

Market Failure

If a new model of DES finds it is unable to guarantee services in a particular area to support jobseekers with disability (i.e. *market failure*) it is our view that the Commonwealth should not lower standards of quality support for the sake of either fulfilling the government’s mutual obligation, or to provide a place service for service sake. Instead, we propose that a failure or gap in market provision should be brought before DES panel members to directly seek expressions of interest from providers to meet demand in the first instance. The Commonwealth should also consider the use of financial incentives to attract high performing providers to move to areas without service coverage.

Recommendations to enhance reform proposals

It is our view that the proposed reform framework has inadequate focus on evidence based employment support practice to ensure that people with disability are provided with the best opportunity to achieve employment outcomes, and derive personal, social and economic benefit.

The Commonwealth should conduct a review of practices used by high performing DES providers to examine what practices are linked to high rates of employment outcomes.

The Commonwealth should provide new resources to assist high performing providers to grow and expand, or ensure that outcome funding payments include a premium to generate resources to self fund expansion to new areas or regions.

The Commonwealth should establish an accreditation training and qualification framework (based on best practice) for DES support staff to provide basic qualification criteria for panel eligibility.

4.3 Improving participant choice (Chapter 3)

“Users should have access to objective, outcomes-based data on available services...where choice may be difficult, make intermediaries or purchase advisors available to help users make decisions...allow funding to follow people’s choices”²⁰

DPO Australia agrees that providing people with disability with “choice and control” is an important part of driving better DES outcomes. This will, however, require a commitment by the Commonwealth to ensure that all participants are given the necessary information and support so that they may make an **informed choice**.

To ensure that support information and support is adequate, we propose that the Commonwealth provide adequate resources for the development and delivery of information and support by independent *consumer* organisations for new and prospective DES participants to make an informed choice.

Information should include;

- provider performance (star ratings);
- provider outcomes (i.e. number and rate, for job placement, 26 weeks and 52 week); at the ESA and LMR level, and by disability type, and by population group;
- Other information should include:
 - the right to choose a provider without location limitations,
 - the right to have advocacy support,
 - strategies to select and interview providers,
 - how to develop a plan with a provider,
 - how to change providers,
 - how to make a complaint,
 - information on linkages with other service support systems.

This information gives people with disability the opportunity to choose providers based on objective past performance outcomes, education and awareness of their rights, and other general information including provider location, specialisation and model of service delivery.

Information that is readily accessible to all people with disability needs attached resourcing so it can be available through a broad range of complimentary communication modes and mediums. This will ensure that the diverse language and communication needs of all DES participants are met, such as through Easy English translations, Auslan videos with captioning, Language other than English (LOTE) translations, community radio, etc.

Funding follows participant choice

²⁰ Harper Competition Policy Review

We agree with the proposed DES reforms to ensure that funding follows a participant's choice of provider, and if and when they change providers.

Transfers to a new provider

We support the proposal to allow participants to transfer or change to a new provider up to three times in their first 12 months of participation, and up to twice in the following year. This should be ample. Any further requests to change providers should have to provide a compelling reason.

We do not believe that DES participants should be transferred to another provider without their consent.

Removing required meetings

We support the proposal to remove the requirement to have face-to-face contacts between providers and participants beyond the initial meeting. All communications between the provider and the participant should be transformational and not transactional, and should be relevant to the support needs of the participant.

This reform addresses complaints from people with disability about having to attend meetings with providers as a matter of required process without any benefit. It is our view that support plans are determined between the provider and participant including how ongoing meeting and communication should take place.

When a participant is having difficulty making a choice

Participants who choose not to make a choice, or are finding making a decision difficult, should be referred to a relevant independent consumer organisation that is skilled in assisting participants with making informed choices. This gives effect to the Harper Review which states, "where choice may be difficult, make intermediaries or purchase advisors available to help users make decisions".

DES plans

DES plans should be discussed and agreed between the participant and provider, set out the participant's goals and choices, and what assistance the provider will do to help the participant find a job and keep a job of their choice.

We agree that the use of plans for mutual obligation or contract compliance purposes are of no benefit to job seekers.

We believe that agreed plans should be made available for quality assurance and audit purposes, or for review if there is a complaint regarding a provider's implementation of the agreed plan.

We suggest that plan templates are not prescribed, but rather that plans developed between the provider and participant are submitted/uploaded to the DSS-DES system as is. It will be important that information and support provided for DES participants includes an indication of the purpose of a DES plan and what may be included in a plan.

Mobile App and Website

We agree that there is a need for a website and (possible) mobile app to provide DES participants access to information about DES. Such a strategy, however, should be

complementary to a direct (face to face) participant informed choice strategy delivered by the independent consumer sector.

As stated above, the types of information should include provider star ratings; provider outcomes (numbers and rates), and outcomes by disability (numbers and rates), for job placement, 26 week outcomes and 52 week sustainability; and information about participant rights to choose, to change, and to complain.

Other information should also include location, specialisations, funding, and service model of delivery. It is very important that information is objective to assist DES participants to make an informed choice.

One of the consequences of a more open market is the potential for an increase in provider marketing strategies to attract new DES participants. Whereas it is legitimate for providers to promote their service through typical marketing strategies (advertising, expos, promotional products etc.), it will be important to ensure that DES participants are well informed to make a choice based on objective outcome based data on available services.

We recommend that a strategy to inform DES participants be developed with representative organisations of people with disability, which provides the capacity for representative organisations to develop and deliver this information directly to participants, in collaboration and cooperation with DSS and DHS.

Part of such a strategy may be to *make intermediaries or purchase advisors available to help users make decisions* in strategic labour market locations to work in cooperation with Centrelink, schools and community services.

Participant controlled funding

We note that the evidence for participant controlled funding at this point is not compelling in terms of improved employment outcomes. We do, however, request that the Commonwealth continue with research and trials of participant controlled funding to determine how this may offer enhanced employment outcomes for people with disability when “control” is adequately informed and supported.

We note that the Youth Mental Health trial stated that;

“While the trial did empower many participants to exercise far greater control and choice...there was a significant proportion who realistically did not have the capacity to make such decisions – especially in a context where limited advice or guidance is provided as a framework for such decisions”. (p.10)

Given this finding, we believe that future research in this area, across a broad range of participant characteristics, should include adequate support to help participants make informed employment support decisions.

DPO Australia requests continued discussions with the Commonwealth about conducting further trial research that builds on the recommendations made by the Youth Mental Health Trial report.

4.4 Assisting participants in the workplace (Chapter 7)

Ongoing Support

We do not support a fee-for-service funding model for ongoing support.

We are concerned that feedback by high performing providers of people with high and ongoing support indicate that a fee for service model prevents a provider from using a ‘swings-and-roundabouts’ approach to meeting the unpredictable and varying ongoing support needs of participants.

Without flexibility in ongoing support funding it is possible that individuals may be restricted to an average fee price leading to a decrease in the number of jobs being maintained when costs rise above the fee level. Our preference is that the Commonwealth examine the characteristics of DES participants who are in receipt of ongoing support in high performing providers, the actual cost and pattern of ongoing support, and the nature of ongoing support activities.

Job-in-Jeopardy

We support the renaming of Job-in-Jeopardy to Workplace Assistance.

We believe the tone of the program should be that “you are always eligible” to seek support to maintain your employment if there is a change in circumstances requiring specialist assistance.

This support should be marketed as positive assistance to help employees and employers to sustain employment when circumstances place the sustainability of a job at risk. This funding support is different from ongoing support as it concerned with addressing a problem that when addressed will be closed.

4.5 Aligning Incentives to Support Better Outcomes (Chapter 5)

DPO Australia questions the assumption that funding incentives are effective in producing better employment outcomes and/or achieve equitable placement of any participant in a job.

As presented to the Disability Employment Reference Group, we are concerned that proposed reform measures have ignored the importance of quality support practices in general, and the nuances of these practices for particular disability groupings.

The report for the Evaluation of the Moderate Intellectual Disability Loading states that:

*“From the available literature it is clear that money alone is no guarantee of outcomes—outcomes are driven by positive conviction and specialist know-how”.*²¹

Whereas this quote is focused on a particular group, this finding is consistent with research that applies to all DES participants. Specialist know-how is an important factor in

²¹ Department of Education, Employment, and Workplace Relations. (2012). Evaluation of Moderate Intellectual Disability Loading.

driving outcomes. In this respect, we want funding to match the practices and costs of DES providers achieving high rates of employment outcomes.

Funding is a complex issue. On the one hand, we do want a greater amount of Commonwealth funding attached to outcome payments rather than service fees. This is because funding service fees for little or no outcome benefit is not value for money.

On the other hand, a delay in funding until an outcome is achieved places strain on high performing providers to carry greater expenditure before receiving revenue.

Another risk of moving more of the funding to outcome payments is that providers that are not confident and/or competent in supporting participants who require higher support hours to achieve an outcome will be less inclined to work with such participants, and choose to park such clients to support participants who incur less support hours and less cost risk if an outcome is not achieved.

Further, the risk of achieving an employment outcome does not necessarily correlate with support hours/cost. A high performing provider, applying evidence based practice, may achieve high employment rates above average, but incur high support hours/cost to achieve this outcome. If risk based funding was applied to such a provider they may get less funding and become unviable even though they achieve high rates of outcomes.

Balance Between Service Fees and Outcome Payments

In general, DPO Australia supports the shift of more of DES funding to outcome payments and less to service fees. We agree that DES funding should not be paying substantial service fees to maintain the viability of providers that are not achieving high rates of employment outcomes.

Our caution is to ensure that such change is developed through testing with higher performing providers to see if a shift in the balance of service fees and outcome payments remains viable and maintains high rates of employment outcomes.

If a shift in the balance between service fees and outcome payments is to be introduced, DPO Australia is interested in a 40:60 mix (service fees to outcome payments) — which is a reverse of the current balance of services fees and outcome payments.

Risk Adjusted Outcome Payments

We do not consider the proposed risk adjusted funding model to be ready for implementation. There are several areas of consideration that need further discussion.

We are concerned that the issue of risk is only considering factors relating to people with disability and the labour market. A significant risk for the participant is that if they do not get a provider with the competence to match their level of support need (taking into account their characteristics and local labour market conditions) then they face the prospect of experiencing failure and continued unemployment.

On the one hand, the purpose of risk based funding is to provide a scale of funding based on the likelihood of achieving a successful employment outcome — with more funding provided to a participant with a higher risk of achieving an outcome; and less funding provided to a participant with a lower risk of achieving an employment outcome.

The DES Reference Group agenda paper for risk-adjusted outcome payments states that:

“providers who work...with participants with fewer barriers to employment can also achieve viable levels revenue albeit with relatively higher rates of outcomes.”

The discussion paper in contrast states that:

“providers cannot survive by simply collecting service fees for the hardest to place in employment while relying on the outcome fees for those job seekers that are easiest to place in employment.” (p. 37)

We need further discussion and clarity on these conflicting principles of funding. Can a provider still be viable if it chooses to work exclusively with participants with few barriers and lower risk at relatively higher rates of outcomes? Does this mean that the funding reform will enable providers to *park* and *cream* participants as long as they get above average outcome rates for easier to place participants?

The risk adjusted outcome payment requires further development, and trialing to see whether this would change provider behaviour to increase employment outcome rates and prevent *parking* and *creaming* behaviour.

There is also a need to test this funding reform proposal against high performing providers to see if the risk adjusted outcome payments meet the actual support cost of providers assisting people with disability with high support needs to get sustainable jobs.

4 & 52 week outcome

We support the introduction of the 4 week payment to ensure that job placements are a better job-participant match and help lower the current high job loss rate after job placement.

We also support the introduction of an outcome payment at 52 weeks of employment. Our preference is that the new payment be funded with new money, but if this funding must come from within existing payments, we would prefer that this be taken from current service fee payments in line with the intention to provide a greater proportion of current funding to outcome payments. This would also minimise the problem of high performers having to wait to receive revenue to cover early support costs.

Pro-rating Service Fees and Outcome Fees

We support the proposed changes to the pro-rating of service fees and outcome payments when participants change providers. This reform proposal offers a change that is better, fairer, and honors participant choice by ensuring funding follows the participant.

4.6 Gateway and Assessments (Chapter 6)

DPO Australia has significant concerns about the current DES gateway and assessments and welcomes the intention to conduct a review of the validity of the system. We are keen to participate in the review process.

We first and foremost reject the notion of the *continuum theory*.²² Initial individual assessments of low work capacity and high levels of support should not be presumed to mean that open employment participation is not possible; or that this means an individual can only ever participate in non-work programs or segregated employment programs.

More than sixty years of research and demonstration indicates that initial work capacity assessments bear little relationship to the potential work capacity following the right level and type of support.²³ This is why evidence based practice is important for the success of DES.

As presented to the DES Reference Group, for people with disability who do not have a mutual obligation, the choice and motivation to work in open employment should be sufficient to enter DES. The research encourages us to presume work capacity and that future work capacity is only known following an opportunity to try work with the right type and level of support.

It is important that the DES gateway not draw any “program silo lines” between DES and other disability support systems using capacity to work assessments (i.e. using a benchmark of 8 hours of work capacity to separate populations between DES and NDIS). The gateway will need to, however, provide a delineation between DES and *jobactive* on the basis of whether disability is a core factor of labour market disadvantage.

We are also aware of the need for the review to take into account “readiness” as opposed to “work capacity”. This means that some people with disability — though capable of work, need to address other urgent matters before they can begin to look for, or perform, work — such as stability in housing, escape from domestic violence, accommodation support, or mental health / health related issues.

We are wanting the gateway and assessment system to be more transformative in helping people with disability access high performing open employment services that are developmental, respectful and ultimately more successful than not.

The reforms should also ensure that:

- direct registration by participants via DES providers continues;
- the entry for school leavers with significant disability without further assessment continues — where education system assessments of permanent disability and need for specialist and ongoing support have already been determined;

²² Steven J. Taylor. Caught in the Continuum: A Critical Analysis of the Principle of the Least Restrictive Environment. *JASH*, 1988, 13, 1, 41-53

²³ Ann M. Clarke & A.D.B. Clarke (Eds.) (1958). *Mental Deficiency. The Changing Outlook*. The Free Press: Illinois.

Baumeister, Alfred (1967). *Mental Retardation. Appraisal, Education and Rehabilitation*. Aldine Publishing Company: Chicago.

Gold, Marc (1980). *Did I Say That. Articles and Commentary on the Try Another Way System*. Research Press Company: Illinois.

Kathleen Martinez. *Integrated employment, Employment First, and U.S. federal policy*. Journal of Vocational Rehabilitation 38 (2013) 165-168

Australian Government Department of Education, Employment and Workplace Relations. Evaluation of Disability Employment Services 2010–2013. Final report (Chapter 7)

- the entry for school leavers that get assistance from NDIS School Leaver Employment Supports are also able to enter DES without further assessment. This should continue the current policy that applies to the NSW Transition to Work and Victorian Transition to Employment programs.

It is our view that program eligibility assessments are different from those assessments conducted by DES providers. Program eligibility should not extend into the area of planning or suggesting interventions. This is the purview of discussion and design between the provider and the participant.

Transition from education to work

The research strongly supports the case that preparation for post school participation in the workforce needs to begin early when young people are still at school.

The responsibility of who provides this early transition-to-work support is unclear; and it is important that any reforms in this area do not reduce the current responsibility of state / territory education systems to provide transition to work planning and implementation.

It is also important to provide clear and tight policy around DES support for students still at school due to past sharp practices in this area.

The original and current purpose of the Eligible School Leaver (ESL) policy was to allow students with significant disability to move smoothly from school to DES without the need for further assessments such as the Job Capacity Assessments of Employment Service Assessments.

The ESL policy, however, was never intended to be a policy for providing guidance on DES assistance for full time students with disability at school. The DES evaluation found, however, that there was a significant increase in the use of the ESL policy to register full students with disability between the ages of 14 and 19 and a large cohort of students listed as “learning disability.” The Commonwealth, at the time of the DES Evaluation, raised significant concerns about sharp practices in how the ESL policy was being used for many students- *raising doubts about their eligibility under the DES Eligible School Leaver Guidelines.*²⁴

As this issue requires discussion and design across the education system, the Commonwealth should review the current responsibility of secondary schools to provide transition to work planning and support for students with disability. It is important that DES work collaboratively with schools in terms of transition from school to work, but that DES not subsume the school’s responsibility.

DPO Australia recommends that the Commonwealth:

- maintain the current ESL policy which provides eligibility based on current state special education assistance to enable the smooth transition of students with significant disability to DES with the need for further assessment;

²⁴ Australian Government Department of Education, Employment and Workplace Relations. Evaluation of Disability Employment Services 2010–2013. Final report

- explain what the 'disability' component of DES eligibility currently is. It is important that any expansion of the ESL cohort is for students with eligible disability and which is consistent with the Disability Services Act 1986. We do not want a return to the sharp practices discovered by the Commonwealth evaluation.

According to the Disability Services Act 1986:

The target group for the purposes of this Part consists of persons with a disability that:

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;*
- (b) is permanent or likely to be permanent; and*
- (c) results in:*
 - (i) a substantially reduced capacity of the person for communication, learning or mobility; and*
 - (ii) the need for ongoing support services.*

This target group aligns closely to the current ESL policy which uses State special education criteria, which includes an assessment of permanent disability, a reduced capacity due to disability, and a need for ongoing support. This definition should align with the current DES-ESS program.

Under part 3 of the Disability Services Act 1986 it states:

- The target group for the purposes of this Part consists of persons who:*
- (a) have attained 14 years of age but have not attained 65 years of age;*
 - and*
 - (b) have a disability that:*
 - (i) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments; and*
 - (ii) results in a substantially reduced capacity of the person:*
 - (A) to obtain or retain unsupported paid employment; or*
 - (B) to live independently.*

This definition of target group - we presume - is meant to be for the DES-DMS program. This group includes people with impairments, but not necessarily permanent, and not requiring long term ongoing support. An expansion of the ESL cohort would need to ensure that eligibility was consistent with this target group definition.

Default allocation process

If a DES participant was finding it difficult to choose a DES provider or in extreme situations refuses to choose a DES provider, we recommend that the participant be first provided with the opportunity to access independent information and support. This builds on the DPO Australia recommendation that there is an independent consumer based system of information and support to help DES participants make an informed choice of provider.

5. Other Critical Issues

Aboriginal and Torres Strait Islander DES Strategy

The significant barriers to employment for Aboriginal and Torres Strait Islander people, lack of employment opportunities particularly in rural and remote areas and the lack of culturally competent services requires particular attention.

DPO Australia recommends a standalone strategy that reinvigorates a strong community development approach and that is linked to the NDIS. This is particularly critical for rural and remote areas. Such a standalone strategy should be developed with representative organisations of Aboriginal and Torres Strait Islander people with disability.

Where DES providers exist, we recommend that Aboriginal / Torres Strait identified employees are utilised to work with Aboriginal and Torres Strait Islander people with disability.

National Training and Qualification for DES Staff

Reform relies on the introduction of informed choice, funding incentives, and building employer demand to improve DES performance. As presented at the DES Reference Group, we believe there is not enough focus on an investigation on best practices used by higher performing DES providers.

The quality of DES provider practice plays a significant role in the success of people with disability in the DES program.

For example, for CALD participants with disability, qualitative research indicates that DES staff were on average able to respond to their diverse cultural and language needs, however lacked disability awareness and disability inclusiveness throughout their engagement, often resulting in negative DES related experiences²⁵.

We recommend that DES conducts a review of best practices through an examination of high performing providers against star ratings and outcomes by disability type. This should form the basis of a national training course that could form part of an accreditation and panel eligibility.

²⁵ National Ethnic Disability Alliance (NEDA), 'Disability Employment Services (DES), Consumer Engagement Project Report', June 2014, Available at: <http://www.neda.org.au/index.php/latest/169-disability-employment-services>